

100401

Vol. I.
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 93.

WEBSTER ELECTRIC COMPANY, PETITIONER,

vs.

SPLITDORF ELECTRICAL COMPANY.

**WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.**

PETITION FOR CERTIORARI FILED JULY 31, 1922.

CERTIORARI AND RETURN FILED DECEMBER 13, 1922.

(29,070)



(29,070)

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

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BILL OF COMPLAINT

(Filed October 12, 1915)

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois.

Eastern Division.

Webster Electric Company,
Plaintiff

vs.

Henry Joseph Podlesak, Tesla Emil
Podlesak, Sumter Electrical Com-
pany and Splitdorf Electric Com-
pany,

Defendants.

In Equity No.
Letters Patent
No. 947,647
No. 948,483
No. 1,003,649
No. 1,002,642
No. 1,056,360
No. 1,101,956
No. 1,098,754
No. 1,098,052
Reissue No. 13,878

To the Honorable Judges of the District Court of the United States in and for the Northern District of Illinois, Eastern Division, in Chancery Sitting:

Webster Electric Company, a corporation organized, chartered and existing under and by virtue of the laws of the State of West Virginia, having its principal place of business at Racine, in the County of Racine and State of Wisconsin, brings this its bill of complaint against Henry Joseph Podlesak (hereinafter sometimes called Henry J. Podlesak), Tesla Emil Podlesak (hereinafter sometimes called Emil Podlesak or T. Emil Podlesak, or Tesla E. Podlesak), citizens of Illinois, and residents of this Division and District, Sumter Electrical Company, a corporation organized, chartered and existing under and by virtue of the laws of the State of South Carolina, and Splitdorf Electrica Com-
pany, a corporation organized, chartered and existing under and by virtue of the laws of the State of New Jersey, both of which said corporations have regularly established places for doing business and duly appointed authorized agents or officers located in the City of Chicago, State of Illinois, in this Division and District, and complains and shows:

Bill of Complaint.

1. That the said Henry J. Podlesak and the said Emil Podlesak, before September 25, 1901, were the first, joint and original inventors of improvements in Inductor Generators for Ignition Purposes, and on September 25, 1901, they applied to the Commissioner of Patents for United States Letters Patent thereon, whereupon division of said application being required by the Patent Office, three additional applications on the same subject matter were filed on January 28, 1908; whereupon such proceedings were had that the following patents were issued to said Henry J. Podlesak and said Emil Podlesak jointly, on the date set forth for each:

Inductor Generators for Ignition Purposes, No. 947,647, granted January 25, 1910 (application Serial No. 413,070 filed January 28, 1908, renewed February 10, 1909, Serial No. 477,251);

Inductor Generators for Ignition Purposes No. 948,483, granted February 8, 1910, (application for Serial No. 413,069, filed January 28, 1908);

Inductor Generators for Ignition Purposes, No. 1,003,649, granted September 19, 1911, (application Serial No. 413,068, filed January 28, 1908);

Inductor Generators for Ignition Purposes, No. 1,056,360, granted March 18, 1913 (application Serial No. 76,559, filed September 25, 1901);

4 That the Said Henry J. Podlesak, before February 17, 1909, was the first, sole and original inventor of improvements in Low Tension Sparking Mechanism for the Gas Engines, and on February 17, 1909, he applied to the Commissioner of Patents for United States Letters Patent thereon, whereupon such proceedings were had that the following Letters Patent were issued to said Henry J. Podlesak on the date set forth:

Low Tension Sparking Mechanism for the Gas Engines, No. 1,022,642, granted April 9, 1912) application Serial No. 478,355, filed February 17, 1909);

That the said Emil Podlesak, before November 12, 1912, was the first, sole and original inventor of improvements in Ignition Devices for Explosive Engines; that the said Emil Podlesak, before December 27, 1911, was the first, sole and original inventor of improvements in Inductor Alternators; that the said Emil Podlesak, before July 21, 1911, was the first, sole and original inventor of improvements in Magneto Machines; and upon the above dates, respectively, he applied

to the Commissioner of Patents for United States Letters patent thereon, whereupon such proceedings were had that the following patents were issued to said Emil Podlesak on the date set forth on each:

Ignition Devices for Explosive Engines, No. 1,101,956, granted June 30, 1914 (application Serial No. 734,143, filed November 29, 1912);

Indictor Alternators, No. 1,098,754, granted June 2, 1914, (application Serial No. 668,153, filed December 27, 1911);

Magneto Machines, No. 1,098,052, granted May 26, 1914 (application Serial No. 639,738, filed July 21, 1911);

5 That the said Emil Podlesak, before the 15th day of April, 1912, was the first, sole and original inventor of improvements in Current Generator and Igniter for Internal Combustion Engines; and on April 15, 1912, he applied to the Commissioner of Patents for United States Letters Patent thereon, whereupon such proceedings were had that the following Letters Patent were issued to said Emil Podlesak, on the date set forth;

Current Generator and Igniter for Internal Combustion Engines, No. 1,055,076, granted March 14, 1913 (application Serial No. 690,921, filed April 15, 1912).

Said Patents were issued in the name of the United States of America, signed by the Commissioner of Patents under the seal of the Patent Offices, and were recorded, with their specifications, in books kept for the purpose, whereby the said Henry J. Podlesak and the said Emil Podlesak, jointly, and the said Henry J. Podlesak and the said Emil Podlesak, respectively, their heirs and assigns, were granted, respectively, the exclusive right to make, use and vend said inventions for seventeen years from the respective dates of the said patents in the United States of America and the Territories thereof. The said inventions of the said Henry J. Podlesak and the said Emil Podlesak, jointly, and the said Henry J. Podlesak and the said Emil Podlesak, were respectively new, useful, not known or used by others in this country before their respective inventions thereof, not

6 patented or described in any printed publication anywhere before their respective inventions, or more than two years before their respective applications, and not in public use or on sale in this country for more than two years before their respective applications, not patented in any foreign country by them or either of them, or by their

or either of their legal representatives, on applications filed more than one year before their respective applications in this country, and not abandoned.

That the aforesaid Letters Patent No. 1,055,076 were inoperative by reason of a defective and insufficient specification to fully secure to said Emil Podlesak, his heirs and assigns, the aforesaid invention and improvement which was described in said Letters Patent and intended to be secured thereby, and that the error in said Letters Patent rendering the same inoperative, as aforesaid, arose by inadvertence, accident and mistake, and without any fraudulent or deceptive intention on the part of the said Emil Podlesak, and on account of the defects and insufficiencies of said Letters Patent, the said Emil Podlesak, on December 23, 1914, made application, to the Commissioner of Patents in accordance with the then existing Acts of Congress, for leave to surrender the said Letters Patent and for the grant to him of new Letters Patent for the same invention, in accordance with the amended specifications presented with said application, and for the unexpired part of the term of said original Letters Patent; and that thereupon, having fully complied with all the conditions and requirements of said Acts of Congress, and
7 having paid the fee required by law, leave to surrender said original letters Patent was duly granted by the Commissioner of Patents, whereupon such proceedings were had that the following Letters Patent were reissued to said Emil Podlesak, on the date hereinafter set forth:

Current Generator and Igniter for Internal Combustion Engines, Reissue No. 13,878, granted February 9, 1915 (Reissue application serial No. 878,726, filed December 23, 1914);

That said reissue patent was issued in the name of the United States of America, signed by the Commissioner of Patents under the seal of the Patent Office, and was recorded with its specification, in books kept for the purpose, whereby the said Emil Podlesak, his heirs and assigns, were granted the exclusive right to make, use and vend said invention for the unexpired term of said original Letters Patent No. 1,055,076, to wit, until the expiration of seventeen years from March 4, 1913.

Printed copies of all of said Letters Patent are hereunto annexed and made a part of this Bill of Complaint.

II. That on or about November 2nd, 1908, the said Henry J. Podlesak and the said Emil Podlesak, by an instrument

in writing, thereafter duly recorded, and for a valuable consideration, granted unto Webster Mfg. Co., a corporation organized, chartered, and existing under and by virtue of the laws of the State of Illinois, and having its principal place of business at Chicago, Illinois, the exclusive right and
8 license to manufacture, use and sell the inventions or improvements, and each and every of them described and claimed in the aforesaid applications for Letters Patent Serial Nos. 76,559, 413,068, 413,069, and 413,070, within and throughout the United States and the Territories and possessions thereof, for and during the term of any patent or patents which might be granted upon said applications, together with all privileges and rights of section as might accrue under the said patents, and in and by which said instrument in writing, the said Henry J. Podlesak and the said Emil Podlesak agreed with said Webster Mfg. Co., and their assigns that they would not, while the aforesaid exclusive license was in force, either make, use, or sell such inventions, or grant, permit or encourage others to do so. Profert is hereby made of said instrument granting the said exclusive license hereinabove referred to, or of duly certified copies thereof to be produced in Court when necessary, and a copy of said instrument granting said exclusive license is hereto attached and marked "Exhibit A" and made a part hereof.

That thereafter, on or about March 26, 1909, your orator by name of Hertz Electric Company was incorporated under and by virtue of the laws of the State of West Virginia, and that on or about March 26, 1909, the said Webster Mfg. Co. did immediately thereafter, by an instrument in writing thereafter duly recorded, and for a valuable consideration, sell, assign, and transfer to your orator under the name of
9 Hertz Electric Company, all of its right, title and interest in and to the said applications for patents, Serial Nos. 76,559, 413,068, 413,069 and 413,070, and any and all patents which might be granted upon or as the result of said application, and its whole right, title and interest in and to the aforesaid license agreement (Exhibit A); and that on or about July 22nd, 1909, the corporate name of the said West Virginia corporation, Hertz Electric Company, was changed to Webster Electric Company.

III. That on or about August 17, 1912, the said Henry J. Podlesak and the said Emil Podlesak did, by an instrument in writing, and for the valuable considerations in hand paid,

respectively, sell, assign, and transfer to ~~one~~ another certain undivided parts of their interest in and to all of the aforesaid applications for Letters Patent, and patents issued or to be issued thereupon, whereby 49/100 of any interest which the said Henry J. Podlesak had in any and all of the aforesaid applications, and patents issued or to be issued thereupon, was sold, assigned and transferred to the said Emil Podlesak, and whereby 51/100 of any interest which the said Emil Podlesak had in any and all of the aforesaid applications, and patents issued or to be issued thereupon, was sold, assigned and transferred unto the said Henry J. Podlesak; and profert is hereby made of said instrument of said instrument of assignment hereinabove referred to, or a duly certified copy thereof in court to be produced when necessary, and a copy of said instrument of assignment is hereto attached and made a part hereof, and marked "Exhibit B."

IV. That on or about the 5th day of February, 1914, said Henry J. Podlesak and said Emil Podlesak, by an instrument in writing and for a valuable consideration, granted unto your orator, Webster Electric Company, a certain license to make, use and vend the inventions or improvements, and each and every one of the inventions or improvements, described, set forth and claimed in the aforesaid patents Nos. 947,647, 948,483 and 1,003,649, for the full remaining terms of the said patents, or any of them, within and throughout the United States of America and Territories and possessions thereof, together with all privileges and rights of action as might accrue thereunder, and profert is hereby made of said instrument of license, or of a duly certified copy thereof to be produced in court when necessary, and a copy of said instrument of license is hereto attached and made a part hereof, and marked "Exhibit C."

V. That on or about the 5th day of February, 1914, said Henry J. Podlesak and said Emil Podlesak, by an instrument in writing, and for a valuable consideration, granted
11 unto your orator, Webster Electric Company, a certain license to make, use and vend the inventions or improvements, and each and every one of the inventions or improvements, described, set forth and claimed in the aforesaid patents No. 1,022,642, Reissue No. 13,878, No. 1,056,360, No. 1,101,956, No. 1,098,754 and No. 1,098,052, for the full remaining terms of the said patents, or any of them, within and

throughout the United States of America and Territories and possessions thereof, together with the right of action against infringers accruing under the said patents, or any of them, and profert is hereby made of said instrument of license, or of a duly certified copy thereof to be produced in court when necessary, and a copy of said instrument of license is hereto attached and made a part hereof, and marked "Exhibit D."

VI. That on or about January 20, 1915, a certain "Supplemental Agreement" in writing, relative to the aforesaid Letters Patent, was entered into by and between the said Henry J. Podlesak and the said Emil Podlesak and your orator, the Webster Electric Company, under and by virtue of which said Supplemental Agreement the rate of royalty or license fee to be paid by your orator to the said Henry J. Podlesak and the said Emil Podlesak, and the minimum annual amount of royalties or license fees, as provided for in the aforesaid license agreements of February 5, 1914, was altered, but under which said supplemental agreement the other terms and conditions of the aforesaid license agreement of February 5, 1914, were not modified, and profert is hereby made of said supplemental agreement, or of a duly certified copy thereof to be produced in court when necessary, and copy of said supplemental agreement is hereto attached and made a part hereof, and marked "Exhibit E."

13 VII. That your orator, Webster Electric Company, among its other corporate powers, is authorized to engage in the business of manufacturing, selling and dealing in electric generators and ignition devices for internal combustion engines, and that ever since its organization and incorporation the said Webster Electric Company has been engaged in manufacturing, selling and dealing in electric generators and ignition devices for internal combustion engines of the class set forth, described and claimed in the aforesaid Letters Patent.

That its predecessor, the Webster Manufacturing Company (see Exhibit A) was similarly engaged in manufacturing, selling and dealing in such electric generators and ignition devices embodying the inventions of one John L. Milton, of Louisville, Kentucky, and under certain applications for United States Letters Patent applied for by the said John L. Milton and upon which said applications Letters Patent of

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the United States have been duly granted as follows: Nos. 959,954, 1,051,376, 1,053,107, 1,069,048 and 1,096,853; and under Letters Patent of the United States Nos. 608,895, 608,896, and 638,933, to Benjamin McInnerney.

That your orator the Webster Electric Company, originally called Hertz Electric Company, as hereinbefore set forth, has, at the expense of many years of effort and of many thousands of dollars, to-wit, not less than Two Hundred Thousands of Dollars (\$200,000.00), built up and developed its business in reliance upon its rights under said patents, and that it
14 is essential to your orator's business, and the success thereof that its rights under and by virtue of the said patents should be fully protected. And that your orator has invested large sums of money in the equipment of a plant for such manufacture and in advertising and otherwise bringing its products to the favorable attention of prospective buyers and users, and has built up a large and expanding and now lucrative business based wholly and entirely upon electric generators and ignition devices embodying the inventions of the said Podlesaks, described, claimed and set forth in the aforesaid Podlesak patents.

VIII. That on or about the tenth day of August 1909, the said Emil Podlesak was employed by your orator at a salary of One Hundred Twenty-five Dollars (\$125.00) per month to undertake certain experimental and development work relating to the aforesaid generators and ignition devices embodying the inventions of said Milton and said McInnerney for the benefit of your orator; that he represented himself to be efficient in the manner of perfecting inventions and improvements to be used in connection with the generators and ignition devices manufactured, sold and dealt in, by your orator.

That as a result of such employment the said Emil Podlesak was by your orator put in full possession of all of the facts relating to its business and to the generators and ignition devices manufactured, sold, and dealt in by your orator and was provided by your orator with materials, tools,
15 machinery laboratory and testing apparatus and devices, and with the assistance of mechanics, artisans, draftsmen, and other skilled workmen, hired by your orator to carry out the orders and instructions of the said Emil Podlesak in developing, improving, and perfecting the generators and ignition devices manufactured, sold, and dealt in, and to

be manufactured, sold and dealt in by your orator; that your orator from time to time adoped and incorporated into its commercial product the designs, improvements, and inventions developed and submitted by the said Emil Podlesak, all with the full knowledge and approval of the said Emil Podlesak and as a result of the terms and conditions of the employment of said Emil Podlesak by your orator.

That the salary of the said Emil Podlesak was increased by your orator from time to time, and that finally on or about the 18th day of May, 1910, the said Emil Podlesak was by your orator made and appointed, at an initial salary of One Hundred and Fifty Dollars (\$150.00) per month, its factory Superintendent and in this capacity as head of its Experimental Department and within a year thereafter as its Factory Superintendent, was given entire control and direction of the manufacturing operations of your orator, including full charge and directions of this so-called experimental department in which the work of further modifying developing, improving, and perfecting the generators and ignition devices manufactured, sold, and dealt in by your orator was

16 That following the appointment of the said Emil Podlesak as such Factory Superintendent and Head of the Experimental Department his salary was from time to time increased by your orator until on or about the third day of March, 1913, the said Emil Podlesak was by your orator made and appointed and employed by your orator as Superintendent of its factory with the title of Works Manager for a period of three (3) consecutive years from the first day of January, 1913, at a salary of Two Hundred Ninety-one Dollars (\$291.00) per month for the first eleven (11) months of said term, at a salary of Two Hundred Ninety-nine Dollars (\$299.00) for the twelfth month of said term, at a salary of Three Hundred Thirty-three Dollars (\$333.00) per month for the following eleven (11) months of said term, and at a salary of Three Hundred Thirty-seven Dollars (\$337.00) per month for the twenty-fifth month of said term and up to and including the last month of said term of three years, the following said third day of March, 1913, the said Emil Podlesak was by virtue of his employment by your orator, given by your orator entire and complete charge of the manufacturing, experimental, and production departments of the business of your orator, and the said Emil Podlesak was made responsible directly to the Board of Directors of your orator

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and to no one else; that on the 4th day of March 1912, the said Emil Podlesak was by your orator's Board of Directors
17 elected Secretary of the said Webster Electric Company.

That in his capacity as an officer and employee of your orator the said Emil Podlesak was given and availed himself of the fullest opportunity to familiarize himself with every detail of your orator's business, including its methods and secrets, its costs of production, its selling prices, its customers and their dealings with your orator, its completion, its finances, its developmental and experimental work, and its plans for the future business and for future development and improvement of the generators and ignition devices manufactured, sold and dealt in, or to be manufactured, sold and dealt in by your orator.

That the said Emil Podlesak represented to your orator that in his successive capacities as Experimenter, Inventor, Superintendent, Works Manager, and Secretary, he would be efficient, honest, and honorable, and that he would not abuse the confidences reposed in him, or the confidential knowledge and information imported to him or acquired by him.

IX. That pursuant to the terms and conditions of his employment by your orator, and pursuant to the understand and agreement relating to such employment by your orator, the said Emil Podlesak, prior to the twenty-first day of July, 1911, invented certain improvements in magneto machines which was a form of generator and ignition device manufactured, sold and dealt in by your orator; that through attorneys designated by your orator the said Emil

Podlesak made application for the United States Letters Patent covering such improvements; that said application was filed in the United States Patent Office on July 21, 1911, and given Serial No. 639,738, and was prosecuted by the said attorneys designated by your orator with the result that United States Letters Patent No. 1,098,052 were, on May 26, 1914, granted covering the said invention of the said Emil Podlesak; that the expenses of preparing and prosecuting the said application were borne by your orator upon the understanding and agreement with the said Emil Podlesak that your orator should and should have the exclusive right and license to make, use, and sell the invention described and claimed in the said application and Letters Patent under terms and conditions identical with those set forth in the aforesaid license agreement dated November 2, 1908 (Exhibit A).

X. That the said Henry Joseph Podlesak is a brother of the said Emil Podlesak and is a registered Patent Attorney and has at all times been familiar with all of the transactions and doings of said Emil Podlesak herein set forth, and has aided, assisted, and co-operated with the said Emil Podlesak in all of his transactions and doings, as herein set forth.

XI. That prior to the twenty-seventh day of December, 1911, the said Emil Podlesak in the courses of his employment by your orator and as a part of his duties in such employment invented certain improvements in inductor alternators; that prior to April 15, 1912, the said Emil Podlesak 19 invented certain improvements in current generators and ignitors for internal combustion engines; that prior to November 29, 1912, the said Emil Podlesak invented certain improvements in ignition devices for explosive engines; that all said improvements were, under the terms and conditions of his employment by your orator, invented by the said Emil Podlesak as your orator's Experimenter, Inventor and Superintendent, and were immediately incorporated by your orator, under the direction and supervision of said Emil Podlesak, into the generators and ignition devices manufactured, sold and dealt in by your orator.

But the said Emil Podlesak delayed and postponed making and failed to make application for the United States Letters Patent upon the said inventions through the attorneys of your orator and at the expenses of and for the benefit of your orator as had been the understanding and agreement between your orator and the said Emil Podlesak, but on the contrary, as your orator did not until long afterwards learn or discover, the said Emil Podlesak did, in co-operation and connivance with the said Henry Joseph Podlesak, deceitfully, wrongfully, and fraudulently make applications for the United States Letters Patent covering the said inventions, the said applications having been filed respectively upon the following dates; to wit:

Inductor Alternator—Application filed December 27, 1911,—Serial No. 668,153.

Current Generator and Igniter for Internal Combustion Engines—Application filed April 15, 1912, Serial No. 699,021.

20 Ignition Devices for Explosive Engines—Application filed November 29, 1912—Serial No. 734,143.

on which said applications United States Letters Patent have issued respectively under the following numbers, to wit:

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1,098,754, patented June 2, 1914.

1,055,076, patented March 4, 1913.

1,101,956, patented June 30, 1914.

that the said applications for United States Letters Patent were filed by the said Emil Podlesak through attorneys of his own selection and the selection of his brother Henry Joseph Podlesak; that the said applications were filed and prosecuted under the direction of the said Henry Joseph Podlesak and the said Emil Podlesak without the knowledge or consent of your orator; and the same were filed and prosecuted surreptitiously and secretly and contrary to the letter and spirit of the then existing terms and conditions of the contract of employment between your orator and the said Emil Podlesak.

XII. That each and all of the inventions described and claimed in said Letters Patent No. 1,055,075 (Re-issue patent No. 13,878), No. 1,101,956, No. 1,098,754 and 1,098,052 were made, conceived of, developed and reduced to practice by the said Emil Podlesak while in your orator's employment and as a part of the duty of the said Emil Podlesak as your orator's employee and during your orator's time and at your orator's expense, and for the benefit of your orator as herein elsewhere set forth.

21 XIII. That the invention described and claimed in said Letters Patent No. 1,022,642 is not in and of itself an electric generator but is and was an ignition device capable of use in connection with and as a part of electric generators and ignition devices such as were manufactured, sold and dealt in by your orator; that said invention described and claimed in said Letters Patent No. 1,022,642 was of no utility whatever in and of itself and that it was useful only when incorporated into or when used in connection with or as a part of some style of electric generator or some other ignition device; that said Henry Joseph Podlesak prior to the issue of said Letters Patent, as your orator is informed and believes, imparted to said Emil Podlesak arranged and agreed with the said Henry Joseph Podlesak to incorporate the said invention into the electric generators and ignition devices manufactured, sold and dealt in by your orator; and that the said invention was thereupon incorporated into your orator's electric generators and ignition devices and became an important part thereof without knowledge by your orator until shortly before February 5, 1914, as hereinafter stated, of any claimed or asserted patent rights with respect thereto in said Henry Joseph Podlesak or any one else.

That after the 9th day of April, 1912, upon which date the aforesaid Letters Patent No. 1,022,642 were issued to the said

22 Henry Joseph Podlesak, and prior to the 5th day of February, 1914, the said Henry Joseph Podlesak representing himself and the said Emil Podlesak, brought to the attention of your orator the fact that the said Letters Patent No. 1,022,642 had been issued, and claimed and represented to your orator, in his own behalf and in behalf of his brother, the said Emil Podlesak, that your orator was and had been infringing upon the said Letters Patent No. 1,022,642, in manufacturing, using, selling and dealing in the Electric Generators and Ignition devices manufactured and sold by your orator under the direction and supervision of the said Emil Podlesak as hereinabove set forth; and that the said Henry Joseph Podlesak, acting in his own behalf, and in behalf of the said Emil Podlesak, at or about the time notified your orator that certain applications for United States Letters Patent, covering inventions theretofore incorporated by your orator, under the direction and supervision of the said Emil Podlesak, in the Electric Generators and Ignition Devices manufactured, used, sold and dealt in by your orator, had been filed by the said Emil Podlesak; and that the said Henry Joseph Podlesak claimed and represented to your orator that your orator did then or upon the issue of United States Letters Patent resulting from the said applications would infringe some or all of the claims thereof, the applications thru referred to by the said Henry Joseph Podlesak being included in the list of said patents and hereinabove set forth, and having serial Nos. 690,921 (Patent No. 1,055,076, Reissue No. 13,878), 734, 143, 668,153, and 639,738.

23 XIV. That by virtue of the relations existing between your orator and said Emil Podlesak as hereinbefore stated inventions made by him while employed by your orator as aforesaid relating to the Electric Generators and Ignition Devices manufactured by your orator in equity and good conscience belonged to your orator, together with the whole right, title and interest in and to any and all United States Letters Patent that might be secured thereupon, or in the alternative, that your orator was entitled at least to the exclusive right and license to make, use and sell such inventions; that as said Podlesaks well knew, the invention covered by said Letters Patent No. 1,022,642 was so combined and used in connection with the inventions of said Emil Podlesak, while employed by your orator, in the Electric Generators and Ignition De-

24 vices manufactured and sold by your orator, that the same could not be segregated without very great injury to your orator's business; that said Henry Joseph Podlesak, acting on behalf of himself and said Emil Podlesak, took advantage of this situation and of the knowledge of himself and said Emil Podlesak in relation to your orator's business, and insisted that your orator was infringing upon their supposed rights under said inventions and the patents and applica-
24 tions for patents in relation thereto and insisted that your orator make with them some arrangement for paying them royalties or license fees; that thereupon, on or about the 5th day of February, 1914, and as a result of the demands and threats of the Podlesaks, as hereinabove set forth, your orator made and entered into the two written contracts or agreements with said Podlesaks hereinabove referred to, and copies of which said contracts are hereto attached and made a part hereof, as Exhibits C and D, respectively, and both of said contracts were made and entered into at the same time and as a part of the same transaction.

XV. That your orator and said Podlesaks proceeded to act under and in accordance with said contracts of February 5, 1914, (Exhibits C and D), (with the exception that under a verbal understanding and agreement between your orator and the said Podlesaks, a certain arbitrary royalty was agreed upon to be submitted in lieu of royalties at the rate of 5% upon a certain type or types of Electric Generator and Ignition Device first manufactured and sold by your orator about
25 six months prior to January 20, 1915), until on or about the 20th day of January, 1915, at or about which time they found and agreed that the method described in said license contracts of February 5, 1914 (Exhibit C and Exhibit D) for determining the amount of license fees or royalties to be paid thereunder by your orator was not satisfactory; and thereupon your orator and said Podlesaks, on or about the 20th day of January, 1915, made and entered into the aforesaid "Supplemental Agreement", a copy whereof is hereto attached and made a part hereof and marked "Exhibit E".

XVI. That the fees, costs and expenses of preparing the aforesaid application for the reissue of said original Letters Patent No. 1,055,076, and of prosecuting the said reissue application were borne by your orator; that the said application for reissue was prepared and prosecuted by the attorneys for your orator; that the said application for reissue having been prepared by your orator's attorneys, was duly submit-

ted to the said Emil Podlesak for the execution by him; that the said Emil Podlesak duly executed the said application before it was filed with the commissioner of Patents; that the said application for reissue was thus prepared and prosecuted by the attorneys for your orator with the full consent and approval of the said Emil Podlesak; that the said application for reissue was thus duly prepared and prosecuted under and by virtue of an agreement between your orator and the said Podlesaks; that your orator should and did have the same right, title and interest in and to the reissued Letters Patent to be granted thereupon as had prior thereto, as hereinabove set forth, been secured to your orator under the said original Letters Patent No. 1,055,076.

XVII. That your orator has fully and faithfully kept and performed each and all of the terms and agreements on its part to be kept and performed, which are contained in said license contracts (Exhibit C and Exhibit D) and said Supplemental Contract (Exhibit E), but as will hereinafter more fully appear, the said Podlesaks have not, nor have either of them, faithfully kept and performed the terms and conditions of said contracts on their part to be kept and performed, but on the contrary they have fraudulently and corruptly, and in consideration of sundry sums of money paid to them and promised to be paid to them by the Sumter Electrical Company and the said Splitdorf Electric Company, conspired and confederated with said companies to cheat and defraud your orator out of its substantial rights under said contracts and each of them, and to injure and if possible ruin the business of your orator.

27 XVIII. That said Splitdorf Electric Company and said Sumter Electrical Company during all the time when they were doing the things which herein they are alleged to have done, have been and they are now dominated and controlled by the same individuals; that said companies during all such times have been and are co-operating together; that during all said times said companies have kept and maintained, and they now keep and maintain, in the City of Chicago, County of Cook and State of Illinois, a common office where a large proportion of their actual business has been and is transacted; that the business of said companies has in fact been and now is attended to and taken care of by the same individuals; and that, as your orator is informed and believes, and so states the fact to be, said Splitdorf Electric Company has acquired and now has full dominion and control over said Sumter Electrical Company, but in exactly what

way your orator does not know and is unable to state, but seeks to have ascertained herein. And your orator charges that said companies in their dealings with said Podlesaks and in relation to the rights of your orator, have in truth and fact acted and do now act together and in confederation and conspiracy, and will, or threaten to, continue with one another to do so.

28 XIX. Said Splitdorf Electric Company and said Sumter Electrical Company have for many years been engaged, and are now engaged, in business similar to that of your orator, namely the manufacturing, selling and dealing in electric Generators and Ignition Devices; that said companies have been and now are active competitors of your orator.

That said Splitdorf Electric Company and said Sumter Electrical Company, well knowing the premises and rights of your orator, Webster Electric Company, therein and thereto, with the intent of injuring your orator and of depriving your orator of the benefits and advantages which might and otherwise would accrue unto your orator from its rights in and to said Letters Patent No. 1,101,956 and reissue No. 13,878, as aforesaid, have, since the dates upon which the said patents were granted respectively, as aforesaid, and before September 4, 1915, unlawfully and without license or allowance by and against the will of your orator and of said Podlesaks, and in infringement of their rights as set forth in and by said Letters Patent No. 1,101,956 and Reissue No. 13,878, committed acts of infringement, to wit, making, using and selling, and offering for sale, and importing into the said North-

29 ern District of Illinois, Eastern Division, for use and sale, and preparing, aiding and encouraging others so to do within the said District and Division, and elsewhere in the United States, Ignition Devices for Explosive Engines constructed in accordance with the disclosures of said Letters Patent No. 1,101,956 and Reissue No. 13,878, and embodying the inventions and improvements set forth, described and claimed therein; and that said Splitdorf Electric Company and Sumter Electrical Company are now continuing so to do, and are preparing and threatening so to do in the future; and that said Splitdorf Electric Company and Sumter Electrical Company, though fully advised and warned of your Orator's rights in the premises, and requested to abstain from and cease their infringing acts and operations, have disregarded such notices and warnings, and have refused to cease their infringing and unauthorized acts, all of which is

contrary to equity and good conscience and in violation of your orator's rights, as stated; ad further that, but for said unlawful and unauthorized acts, your orator would still be in receipt of all of the profits accruing from said Letters Patent, all of which works great and irreparable injury to your orator and to its rights in the premises.

30 XX. That the violation of your orator's rights under said license contracts (Exhibit C, Exhibit D and Exhibit E) and under said patents and the infringement thereof by the said Splitdorf Electric Company and the said Sumter Electrical Company was first brought to your orator's attention by the said Emil Podlesak and the said Henry Joseph Podlesak; that in or about the month of June, 1915, the said Henry Joseph Podlesak and the said Emil Podlesak urged and insisted that your orator bring suit against the said Sumter Electrical Company, or their customers, alleging the infringement of the aforesaid Reissue Letters Patent No. 13,878 and praying for an injunction restraining such infringement and for an accounting for damages and profits due your orator as a result thereof; ad that in compliance with such urgent and insistent suggestions, requests and demands of the said Emil Podlesak and the said Henry Joseph Podlesak, and in order to protect its own interests and business, your orator did, during the month of July, 1915, direct its attorneys and counsel to commence such suit or suits alleging such infringement and praying such relief against the said Sumter Electrical Company, whereupon the attorneys ad counsel for your orator did prepare such a bill of complaint, in which the said Emil Podlesak and the said Henry Joseph
31 Podlesak were joined, with their knowledge, consent and approval, and in accordance with the terms of the License Contracts (Exhibit C and Exhibit D) hereinbefore referred to, with your orator, as parties complainant; that the said bill of complaint was duly verified on or about the 31st day of July, 1915, and on or about the 3rd day of August, 1915, was forwarded by the attorneys and solicitors for your orator and for the said Emil Podlesak and the said Henry Joseph Podlesak to the United States District Court for the Eastern District of South Carolina, at Charleston, South Carolina, with directions that process be served promptly upon the said Sumter Electrical Company; that such process was duly served by the United States Marshal, return of such service having been made on or about the 25th day of August, 1915; that in and about the investigation of the law and the facts pertinent thereto, the preparation of the said bill of complaint,

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the filing thereof and the procurement of service upon the said Sumter Electric Company, your orator went to great expense in time, labor and money.

XXI. That, having induced your orator to go to such great expense and to have prepared and delivered to the clerk of the said Court for filing the said bill of complaint against the said Sumter Electrical Company, the said 32 Emil Podlesak and the said Henry Joseph Podlesak, or one or both of them, did, as your orator is informed and believes, in some manner, the details of which are unknown to your orator, approach the said Splitdorf Electric Company and Sumter Electrical Company, and did then and there, and on or before the 20th day of August, 1915, advise and acquaint the said Splitdorf Electric Company and Sumter Electrical Company of the fact that the said bill of complaint was in course of preparation or had been prepared and forwarded to the Clerk of the said Court to be filed, and did unfairly, fraudulently and wrongfully connive and conspire with the said Splitdorf Electric Company and the said Sumter Electrical Company, unfairly and wrongfully, to violate the rights of your orator under the said License Contracts and "Supplemental Agreement" (Exhibit C, Exhibit D and Exhibit E) and all of the aforesaid Podlesak Patents; and that thereupon the said Splitdorf Electric Company and Sumter Electrical Company, in order if possible to harrass and embarrass your orator in the enforcement of its said rights, and to defeat if possible your orators said rights and the enforcement thereof against the said Splitdorf Electric Company and Sumter Electrical Company, and with a view to procuring a pre- 33 tended right to continue and to engage in the manufacture, use and sale of Electric Generators and Ignition Devices embodying the inventions and improvements described and claimed in the aforesaid Podlesak patents, made and entered into a fraudulent and corrupt arrangement and conspiracy with said Podlesaks, by which said Podlesaks, in consideration of large sums of money paid and to be paid to them, pretended to assign to said companies all of their right, title and interest in and to all of the said Podlesak patents and all of their rights under the said license Contracts and said Supplemental Agreement (Exhibits C, D and E) with your orator, and also pretended to give and grant to said companies the right to use said inventions and improvements in making, using and selling the Electric Generators and Ignition Devices produced and marketed by said companies, and also pretended to give to said companies the

right to control the said suit theretofore instituted by the said Emil Podlesak and the said Henry Joseph Podlesak and your orator against said Sumter Electrical Company, and any other or like litigation which might be instituted to protect the rights of your orator under the said contracts and under the said patents.

34 XXII. That pursuant to said fraudulent arrangement and conspiracy between them, and as part and parcel thereof, said Podlesaks and said Splitdorf Electric Company and Sumter Electrical Company, on or about the 4th day of September, 1914, made and entered into a contract in writing, in and by which they recited that said Podlesaks were the joint owners of certain inventions and Letters Patent, being the same inventions and Letters Patent embodied in said License Contracts (Exhibits C and D) and Supplemental Contract with your orator, and also the Letters Patent granted upon the applications embodied in said contracts with your orator; and also recited that the Podlesaks had granted licenses under said patents to your orator as evidenced by said License Contracts (Exhibits C and D) and Supplemental Contract; and also recited that said Splitdorf Electric Company and Sumter Electrical Company had been nominated by one F. C. Manning, the secretary of said Sumter Electrical Company, under an option dated August 20th, 1915, and that they were desirous of acquiring the entire interest in said inventions, Letters Patent and applications, together with all rights to manufacture, use and sell said inventions, subject only to the said licenses theretofore granted to your orator, and also the entire interest of the Podlesaks in said agreements with your orator, and in the business of manufacturing and selling magneto ignition apparatus

35 for internal combustion engines, i. e., Electric Generators and Ignition Devices, together with the good will appertaining to said business of the Podlesaks, in part represented by the association of their names, or either of them, with the business or apparatus manufactured or to be manufactured or sold under the aforesaid Letters Patent and applications on said agreements; also all re-issue granted or to be granted of said Letters Patent and patents granted on said applications, as well as any improvements on said inventions, the applications and patents therefor; and in and by said contract the Podlesaks, in consideration of the sum of Twenty-five Thousand Dollars to them in hand paid, purported to sell, assign, transfer, set over and convey to the

Splitdorf Electric Company, and the Sumter Electrical Company jointly, the entire right, title and interest in and to and under each of said inventions and improvements, Letters Patent and applications for Letters Patent, with all divisions, re-issues and extensions thereof, including the right to sue and recover to their own use for infringement of the same, whether committed before or after the date of said agreement, such purported assignment being subject only to the licenses theretofore granted to your orator; and said Podlesaks also by said contract, purported to assign to said Splitdorf Electric Company and Sumter Electric Company, jointly their entire right, title and interest in, to and under, or arising out of said contracts with your orator, and the royalties and other profits flowing therefrom after the date of said contracts, as well as the entire interest and good will of the Podlesaks, in the business of manufacturing and selling magneto apparatus for internal combustion engines, (Electric Generators and Ignition Devices), and any other apparatus described or claimed in said Letters Patent and applications, and included in said contracts with your orator; the same to be held and enjoyed by said Splitdorf Electric Company and Sumter Electrical Company or the survivor of them, their successors and assigns, as fully, freely and entirely as they might have been held and enjoyed by the Podlesaks, had not said contract of September 4, 1915, been made; and in and by said contract it was further agreed that the preparation and prosecution of all applications for patents or inventions thereby conveyed, or agreed to be conveyed, including both pending and new applications,—original, divisional, reissue and extension, shall be by the attorney or attorneys for said Splitdorf Electric Company and Sumter Electrical Company on their designation, and the Podlesaks appointed said attorneys as their attorneys for that purpose, and agreed that they would at all times keep the Splitdorf Electric Company and the Sumter Electrical Company, or their attorneys, fully informed as to inventions they might make which might fall within the terms of said agreement, and said Podlesaks further agreed that they would at all times aid and assist in the preparation and prosecution of said applications, and in any proceeding ancillary thereto; all, however, without expense to themselves for costs or attorney fees, said expenses to be borne entirely by the Splitdorf Electric Company and the

Sumter Electrical Company; and the Podlesaks further agreed that upon demand of the Splitdorf Electric Company and the Sumter Electrical Company, or their designated attorneys, they would execute assignments satisfactory to said attorneys, of all said inventions and improvements not specifically designated, but included within the scope of said contract of September 4, 1915, and in and by said contract of September 4, 1915, the Splitdorf Electric Company and the Sumter Electrical Company further agreed to pay the Podlesaks an additional sum of Forty Thousand Dollars in four equal installments of ten thousand dollars (\$10,000.) each on the first day of October of the years 1916, 1917, 1918, and 1919; and in and by said contract the Podlesaks further agreed that neither of them would engage in the manufacture

or sale of magneto ignition apparatus for internal combustion engines for the period of five (5) years, throughout the territory covered and included within the monopoly granted by said Letters Patent, it being the intention of the parties to said contract of September 4, 1915, that the field of business of the Splitdorf Electric Company and the Sumter Electrical Company included the whole of, and was co-extensive with said territory; and in and by said contract it was further understood and agreed that nothing in said covenant not to engage in business should operate to prevent the Podlesaks from engaging in business involving either the use of a magneto generator for other purposes than internal combustion engine ignition, or involving the accomplishing of internal combustion engine ignition by other means than magneto generator or dynamo, provided said business does not involve any infringement upon any claims or patents by said agreement purported to be assigned or agreed to be assigned to the Splitdorf Electric Company and the Sumter Electrical Company, the validity of which was expressly admitted and warranted by the Podlesaks; and in and by said contract of September 4, 1915, it was further understood and agreed that in the event of any breach of the covenant not to compete, the Podlesaks should become jointly and severally liable to the Splitdorf Electric Company and the Sumter

Electrical Company in the sum of Five Thousand Dollars (\$5,000.) as liquidated damages, and in addition thereto, for all actual damages in excess thereof, sustained by the Splitdorf Electric Company and the Sumter Electrical Company by reason of said breach, such damage to

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be assessed and determined by a court of proper jurisdiction, and that pending such determination, all sums remaining in the hands of the Splitdorf Electric Company and the Sumter Electrical Company, and which would otherwise be due and payable under said contract to the Podlesaks, would be retained by the Splitdorf Electric Company and the Sumter Electrical Company as security for the payment of the aforesaid damages; and in and by said contract of September 4, 1915, the Podlesaks warranted that they had the right to manufacture, use and sell the inventions described in said patents, and applications for patents; that they were the owners of said letters patent and also of all of the other letters patent and inventions mentioned in said contracts with your orator; that they had the right to make said purported assignments by said contract of September 4, 1915; that they had not previously made any assignment or granted any license, shop right or other rights of any kind or character under said patents, except the rights granted under said

40 contracts with your orator; and that when they made and entered into said contracts with your orator, it was understood and agreed on the part of your orator, that said Podlesaks reserved and retained unto themselves, all the rights, title and interest in and by said contract of September 4, 1915, warranted, and that same were assignable by the Podlesaks at their own will and pleasure.

Said contract of September 4, 1915, will hereinafter for convenience only, be sometimes designated as the "Splitdorf" contract, and a copy thereof is hereto attached, marked Exhibit "F" and made a part hereof.

41 XXIII. That at the time said Splitdorf Contract was made and entered into, said Podlesaks were not, nor was either of them, nor were they or either of them at any other time, nor are they now engaged in the business of manufacturing or selling or dealing in magneto ignition apparatus for internal combustion engines (Electric Generators and Ignition Devices), and that they did not, nor did either of them, then, or at any time, or now, have any good will, attached to or connected with any such business. On the contrary, as hereinbefore shown, said Emil Podlesak had been for a long time in the employment of your orator, and while he was so employed, your orator built up a large and extensive business in manufacturing, selling and dealing in such magneto ignition apparatus, and at the time when the said Splitdorf Contract

was made and entered into your orator had, and now has, a very valuable good will connected with such business.

And your orator shows that by said License Contract (Exhibit D) between it and said Podlesaks, your orator agreed, except under certain additional obligations, to sell the apparatus manufactured by it thereunder only in connection with the apparatus manufactured and sold by your orator under said License Contract (Exhibit C), and that in and by

42 said License Contract (Exhibit C) your orator agreed to mark each of the devices manufactured thereunder with the words "Patented" and the surname of said Podlesaks, that your orator has so marked the devices manufactured and sold by it, and the same have become known on the market by that name; that the only good will which the Podlesaks at any time had in connection with the manufacture or sale of any such apparatus, was the good will arising from such use of their name by your orator under its said contracts with them.

And your orator charges that the attempt of said Podlesaks to grant, and of said Splitdorf Electric Company and said Sumter Electrical Company to acquire by said Splitdorf Contract the alleged good will of said Podlesaks, was merely an attempt by said Podlesaks to grant, and by said Splitdorf Electric Company and said Sumter Electrical Company to acquire the right to said Splitdorf Electric Company and said Sumter Electrical Company to designate the magneto apparatus manufactured and sold by them by the name "Podlesak", and in that way to make a pretense of having acquired the good will of your orator's business, and that the use of the said name "Podlesak" upon the magneto apparatus (Electric Generators and Ignition Devices) threatened to be sold and placed upon the market by the said Splitdorf

43 Electrical Company and Sumter Electrical Company is designed and intended by the said Podlesaks and the said Splitdorf Electric Company and the said Sumter Electrical Company to deceive, and is calculated and likely to deceive purchasers and users and to cause them to believe that the apparatus so placed upon the market by the said Splitdorf Electric Company and Sumter Electrical Company is the apparatus placed upon the market by your orator, and that the public and purchasers generally will be led to believe that the said apparatus sold and placed upon the market by the said Splitdorf Electric Company and the said Sumter Elec-

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trical Company is apparatus made and sold by your orator, all of which is greatly to the peril of your orator's reputation and business; and from the facts herein set out your orator further charges that the said Splitdorf Electric Company and the said Sumter Electrical Company had and have a fraudulent intent too appropriate to themselves the benefit of the public demand for your orator's Electric Generators and Ignition Devices; and your orator shows that the said public demand for Electric Generators and Ignition Devices possessing the distinctive characteristics of your orator's product was created and maintained by your orator; that your orator has spent large sums of money in creating the said public demand and in so advertising the said Electric Generators and Ignition Devices under the name and in connection with the name "Podlesak" and in bringing the said apparatus to the knowledge of the public; that your orator's Electric Generators and Ignition Devices under the said name have acquired an extensive and valuable reputation throughout the United States and in foreign countries through the efforts and labors of your orator and its large expenditures of money in advertising and in advancing the sale of its said Electric Generators and Ignition Devices under the said name; and your orator has acquired a valuable property interest in and to the said name which makes the enjoyment of the use of the said name to the exclusion of the said Splitdorf Electric Company and Sumter Electrical Company of great pecuniary importance to it.

And your orator further charges that the said Henry J. Podlesak and he said Emil Podlesak have aided, abetted and encouraged the said Splitdorf Electric Company and Sumter Electrical Company in their said infringement and threatened infringement of your orator's patent rights as aforesaid, and in the proposed and threatened unfair competition of the said Splitdorf Electric Company and Sumter Electrical Company as aforesaid; and that the said Henry J. Podlesak and the said Emil Podlesak have agreed with the said Splitdorf Electric Company and Sumter Electrical Company, and propose and threaten in the future to aid, abet, encourage and assist the said Splitdorf Electric Company and Sumter Electrical Company in the said infringement and infraction of your orator's rights and in the said unfair competition with
 45 your orator.

XXIV. That when said Podlesaks and said Splitdorf

Electric Company and Sumter Electrical Company made and entered into said Splitdorf Contract, they and each of them had full knowledge of said License Contracts, and "Supplemental Agreement" (Exhibits C, D and E) between said Podlesaks and your orator, and the rights of your orator thereunder, and they and each of them well know, or should have known, that the making of the said Splitdorf Contract by said Podlesaks was a breach of their said contracts with your orator, and in violation of your orator's rights thereunder; and your orator charges that the making of said Splitdorf Contract was fraudulent and corrupt, and was made with a view to cheat and defraud your orator out of its just rights under its said contracts with the Podlesaks.

Your orator further charges that under its said contract with said Podlesaks, the said Podlesaks held the title to the patents and applications for patents embodied therein in trust for your orator, and that if said Splitdorf Contract operated to transfer the legal title to said patents and applications for patents from said Podlesaks to said Splitdorf Electric Company and Sumter Electrical Company, said Companies took such title and held and now hold the same as trustees of your orator, and that both said Podlesaks and said Splitdorf Electric Company and Sumter Electrical Company are chargeable with the duties and obligations of trustees to your orator; and your orator charges that neither said Pod-

lesaks nor said Splitdorf Electric Company nor said
46 Sumter Electrical Company has been faithful to their or its duties as such trustees for your orator, but that on the contrary, as herein more fully appears, said Podlesaks, in consideration of money paid to them by said Splitdorf Electric Company and said Sumter Electrical Company have undertaken to, and have, so far as they have been able, betrayed said trust, and said Splitdorf Electric Company and said Sumter Electrical Company, in aid of their commercial piracy, have paid large sums of money to said Podlesaks to so betray their trust; and that said Splitdorf Electric Company and Sumter Electrical Company now contemplate and intend to be faithless to and to betray the trust imposed in them as such trustees for your orator, as in this Bill of Complaint more fully appears.

XXV. That as hereinbefore appears said Splitdorf Electric Co. and Sumter Electrical Co. are acting as one person and said Sumter Electrical Company is dominated and con-

Minnesota

St. Paul, Minn.

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trolled by said Splitdorf Electric Co.; that said Sumter Electrical Co. has heretofore manufactured and offered for sale and is now manufacturing and offering for sale magneto ignition apparatus involving some of the inventions described and claimed in the patents included in said contracts between your orator and said Podlesaks; that your orator is informed and believes that the said Splitdorf Electric Co. and Sumter Electrical Co. propose and intend and unless prevented by the injunction of this court they will hereafter manufacture and offer for sale and sell if they can, magneto

47 ignition apparatus embodying some or all of said inventions, and that they propose and intend to designate the same by the name of "Podlesak"; that said Splitdorf Electric Company, and said Sumter Electrical Company, claim, and will continue to claim, unless prevented by such injunction, that they have a right to so manufacture and offer for sale such magneto ignition apparatus under and by virtue of the purported assignment by the Podlesaks to them in said Splitdorf Contract; but your orator charges that as said Splitdorf Electric Company and Sumter Electrical Company well knew, or should have known, said Podlesaks had no right, power or authority to give or grant such right to them; and that the attempt by said Podlesaks to give and grant such right to said Splitdorf Electric Company and Sumter Electrical Company was in breach and violation of your orator's exclusive rights as herein set forth.

XXVI. That on or about the 11th day of September, 1915, your orator received in the mail a notice and demand signed by the Sumter Electrical Company by its Solicitor and by its Attorney and Counsel, which said notice was and is as follows:

"File No. 2417

IN THE UNITED STATES DISTRICT COURT
Eastern District of South Carolina

Emil Podlesak, Henry J. Podlesak, and Webster Electric Company, <i>Plaintiffs,</i>	} In Equity Letters Patent Re- issue No. 13,878.
<i>vs.</i>	
Sumter Electrical Company <i>Defendant.</i>	

48 To Webster Electric Company,
Racine,
County of Racine,
Wisconsin.

You are hereby notified of the appearance of the Sumter Electrical Company, the defendant named in the above entitled cause, to be made of record in due course.

Please take notice that on the 4th day of September, 1915, Emil Podlesak and Henry J. Podlesak, plaintiffs named in the bill of complaint in this cause, duly executed and delivered an assignment of their entire right, title and interest in and to reissued Letters Patent No. 13,878 granted to them February 9, 1915, including the right to manufacture, use and sell the invention described and claimed therein, together with a certain other patents, applications and inventions, to the Splitdorf Electrical Company of Newark, New Jersey, and the Sumter Electrical Company of Sumter, South Carolina, the defendant named in the said Bill of Complaint, jointly. A copy of said assignment is attached hereto, and an executed original is offered for your inspection at the office of Sumter Electrical Company at 1413 Michigan Avenue, Chicago, Illinois. The original instrument will be produced in Court when necessary.

Your attention is particularly called to the fact that by virtue of this assignment, the Sumter Electrical Company, named as defendant in the bill of complaint filed in this cause, now stands in the place and possessed of all rights of Emil Podlesak and Henry J. Podlesak, named as plaintiff therein, with respect to the matter alleged in the
49 bill, and including both the rights to manufacture, use and sell, and the right to recover for past infringement. You are requested to take immediate steps to dismiss the

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aforesaid bill of complaint and terminate these proceedings, without the Sumter Electrical Company being put to the expense and trouble of answering the same; in default of which application will be made to the Court in due course for costs. In this connection your attention is called particularly to the fact that the Sumter Electrical Company, by virtue of the foregoing assignment, has acquired the rights of the said Emil Podlesak and Henry J. Podlesak under their previous license agreements with your company, one of which is the right to be relieved of all costs and expenses of suits brought by you for infringement of their patents.

You are further notified to account to the aforesaid Splitdorf Electric Company and Sumter Electrical Company, and to render payment to them of all royalties accruing on and after the 4th day of September, 1915, under the three several license agreements between your company and Emil Podlesak and Henry J. Podlesak referred to in the aforesaid assignment as Exhibits A, B and C, Exhibit B being also pleaded in the third paragraph of the bill of complaint filed by you in the hereinbefore entitled cause.

You are further notified that in default of immediate dismissal of the bill on your motion, application will be made to the Court in behalf of the Sumter Electrical Company to increase the amount of costs to be secured, under Rule 50 205 of the Rules of Practice in the District Courts of the United States for the Eastern and Western Districts of South Carolina.

SUMTER ELECTRICAL COMPANY.

By HARMON D. MOISE

Solicitor,
Sumter, S. C.

EDWARD E. CLEMENT,

Attorney and Counsel,

McLachlen Bldg.,

Washington, D. C."

The the caption appearing at the top of the said notice if the caption and title of the suit commenced by the said Emil Podlesak and Henry Joseph Podlesak and your orator, Plaintiffs, against the Sumter Electrical Company, Defendants, hereinabove referred to, and in which process was served upon the said Sumter Electrical Company on or about the 25th Day of August 1915; that attached to the said notice was a paper purporting to be a true copy of the said Split-

dorf Contract, hereinbefore referred to, and a copy of which is hereto attached as "Exhibit F".

That on the 23rd day of September 1915 the said suit of Podlesak et al vs. Sumter Electrical Company was, by order of Court, dismissed and discontinued without prejudice to the rights of any of the parties thereto.

XXVII. That the attorneys and solicitors duly appointed and constituted by your orator in the matter of all of the patent litigation heretofore commenced or contemplated by your orator under and relating to any and all of the said Podlesak patents hereinabove set forth are and have been Lynn A. Williams, of Chicago, Illinois, and the firm of Williams & Bradbury, of Chicago, Illinois, comprised of the said

Lynn A. Williams and Clifford C. Bradbury, of Chicago, 51 Illinois; and in the matter of the suit commenced in the

United States District Court for the Eastern District of South Carolina by Emil Podlesak, Henry Joseph Podlesak and your orator, plaintiffs, versus Sumter Electrical Company, defendant, on or about the 24th day of August, 1915 hereinabove referred to, the firm of Smythe and Visanski, of Charleston, South Carolina, were by your orator duly appointed and constituted Local Counsel and Solicitors; that the appointment of the said attorneys, solicitors, and counsel for your orator in the aforesaid matters is and was for a long time past fully known to the said Emil Podlesak and the said Henry Joseph Podlesak, and to the said Splitdorf Electric Company and the said Sumter Electrical Company;

That in due course of transmission by mail, or telegraph, as the case may have been, the said attorneys, solicitors, and counsel for your orator duly received from the said Splitdorf Electric Company and the said Sumter Electrical Company, or their agents, letters and telegrams as follows:

"Western Union Telegram

Sumter, S. C., Sept. 17, 15.

Lynn A. Williams, Attorney,

719 Monadnock Block, Chicago.

Sumter Electrical Co. hereby revoke all agency and power of attorney heretofore executed by Emil Podlesak and Henry J. Podlesak to you or any other as attorney for Webster Elec. Co. et al versus Sumter Elec. Co.

SUMTER ELEC. CO.

By CHAS. T. MASON,
Prest."

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"Sumter Electrical Company.

Sumter, S. C. 9/17/15.

Lynn A. Williams, Atty. at Law,
719 Monadnock Block,
Chicago, Ill.

Dear Sir:

Enclosed herewith you will find copy of telegram
52 we have just sent you.

We wish to confirm this telegram as follows:

"Sumter Electrical Company hereby revoke all agency and
power of attorney heretofore executed by Emil Podlesak and
Henry J. Podlesak, to you or any other as attorney for Web-
ste Electric Company, et al, versus Sumter Electrical Com-
pany"

Yours very truly,

SUMTER ELECTRICAL COMPANY,

By C. T. MASON,

President."

HRV/IB

Attest:—

E. H. RHAME,

Asst. Sec."

(Enclosure)

Western Union Day Letter

Sumter, S. C. Sept. 17th, 1915.

Lynn A. Williams, Atty. at Law,
719 Monadnock Block,
Chicago, Ill.

Sumter Electrical Company hereby revoke all agency and
power of attorney heretofore executed by Emil Podlesak and
Henry J. Podlesak to you or any other attorney for Webster
Electric Company et al versus Sumter Electrical Company.

SUMTER ELECTRICAL COMPANY,

By CHAS. T. MASON,

President.

Paid: S. E. C.

4.50 P. M.

9/17/15.

Attest:

E. H. RHAME,

Asst. Sec."

“Sumter Electrical Company

Sumter, S. C. 9/17/15.

Smythe & Visanska, Atts. at Law,

Charleston, S. C.

Gentlemen:

53 Enclosed herewith you will find copy of telegram which we have just sent you.

We wish to confirm this telegram as follows:

“Sumter Electrical Company hereby revoke all agency and power of attorney heretofore executed by Emil Podlesak and Henry J. Podlesak, to you or any other attorney for Webster Electric Company, et al versus Sumter Electrical Company”

Yours very truly,

SUMTER ELECTRICAL COMPANY,

By C. T. MASON,

President.

HRV/IB

Attest:—

E. H. RHAME,

Asst. Sec.”

“Western Union Telegram

Newark, N. J., Sept. 18, '15

Smythe and Visanska,

Charleston, C. C.

Splitdorf Electrical Company hereby revoke all agency and power of attorney heretofore executed by Emil Podlesak and Henry Joe Podlesak to you or any other as attorney for Webster Electric Co. et al versus Sumter Electrical Company.

SPLITDORF ELECTRICAL CO.,

J. F. ALVORD,

Prest.”

“Western Union Telegram

Newark, N. J., Sept. 18, '15

Lynn A. Williams,

719 Monadnock Block,

Chicago, Ill.

Splitdorf Electrical Company hereby revoke all agency and power of attorney heretofore executed by Emil Podlesak and Henry Joe Podlesak to you or any other as attorney for Webster Electric Company et al versus Sumter Electrical Company.

SPLITDORF ELECTRICAL CO.,

J. F. ALVORD,

President.”

Bill of Complaint.

"Splitdorf Electrical Company

Newark, N. J., Sept. 18, 1915.

Mr. Lynn A. Williams, Atty. at Law,

719 Monadnock Block,

Chicago, Ill.

Dear Sir:—

Enclosed herewith you will find copy of telegram which we sent you this day, which we wish to confirm as follows:

"Splitdorf Electrical Company hereby revoke all agency and power of attorney heretofore executed by Emil Podlesak and Henry J. Podlesak, to you or any other as attorney for Webster Electric Company et al versus Sumter Electrical Company."

Yours very truly,

SPLITDORF ELECTRICAL CO.

JOHN F. ALVORD,

President.

M. W. BARTLETT,

Secy.

(Corporate Seal)

MWB*TSW

(Enclosure)

"Western Union Telegram

September 18, 1915.

Lynn A. Williams,

719 Monadnock Block,

Chicago, Ill.

Splitdorf Electrical Company hereby revoke all agency and power of attorney heretofore executed by Emil Podlesak and Henry Joe Podlesak to you or any other as attorney for Webster Electric Company et al versus Sumter Electrical Company.

SPLITDORF ELECTRICAL COMPANY

J. F. ALVORD,

President.

MWB*TSW

9:15 A. M.

XXVIII. That under and pursuant to said contracts with the said Podlesaks your orator is obliged to furnish
 55 to said Podlesaks on or before October 15th, 1915, and on or before the 15th of January, April, July and October in each year thereafter during the life of the said contracts a report showing the total number and selling price of devices embodying the improvements described and claimed in the

patents covered by such contracts for the quarter of a year ending September 30th, 1915; and by said contracts it is provided that your orator's books of account shall be open to the inspection of said Podlesaks or their attorney or agent at all reasonable times; that the only purpose of such provisions was to enable said Podlesaks to ascertain and verify the amount of license fees or royalties to be paid to them by your orator; that said Splitdorf Electric Company and Sumter Electrical Company claims that, under and by virtue of said Splitdorf contract, they now have the right to receive such reports and examine your orator's books of account, and that it is a part of the fraudulent arrangement and conspiracy hereinbefore referred to between the said Splitdorf Electric Company and Sumter Electrical Company and said Podlesaks, that said Company shall receive such reports and examine your orator's books, directly, or indirectly through said Podlesaks or some attorney or agent designated by them; that the main object and purpose of said Splitdorf Electric Company and Sumter Electrical Company, in procuring such reports and examining your orator's books, is not to ascertain and verify the amount of royalties payable by your orator, but is to pry into and get the secrets of your orator's business, the names and locations of your orator's customers,
56 the amount of business done with them and the prices at which your orator's products are sold to them, to the end that the said Splitdorf Electric Company and said Sumter Electrical Company may fraudulently, unfairly and unjustly interfere with the trade and business of your orator, and injure, and, if possible, ruin the same.

Your orator is ready, able and willing to pay to whomever may be entitled thereto, all license fees and royalties payable by it under its said contracts; but your orator alleges that in equity it ought not to be compelled to furnish such reports to said Splitdorf Electric Company and Sumter Electrical Company or allow them to examine its books, and that said Podlesaks ought not to be permitted, directly or indirectly, to furnish to said Splitdorf Electric Company, or said Sumter Electrical Company said reports, or any information gathered by them from the books of your orator; and your orator offers to make such reports, and to allow said books to be examined under the direction and control of this court, but asks that the court adopt and prescribe such protections with respect to such reports and the examination of your orator's

books as will protect your orator against the fraudulent plans and schemes of said Podlesaks and said Splitdorf Electric Company and Sumter Electrical Company herein set forth. That it is part and parcel of said fraudulent arrangement and conspiracy between said Podlesaks and said Splitdorf Electric Company and Sumter Electrical Company that said Companies, by making use of the information which they would gain if permitted to receive said reports from your orator and examine its books, and making use of the inventions described and claimed in said Letters Patent and applications for Letters Patent, to interfere with and cripple your orator's business to such an extent that your orator would not be able to comply with the terms and agreements contained in its said contracts with said Podlesaks, on its part to be performed; and that in consequence thereof, your orator will be obliged to make default under said contracts, and that thereupon said Podlesaks and said Splitdorf Electric Company and Sumter Electrical Company will undertake to terminate said contracts and all the rights of your orator thereunder; and that by that means in that way, said Splitdorf Electric Company and Sumter Electrical Company will endeavor to get and acquire all of the rights of your orator under said contracts, for the benefit of themselves and said Podlesaks; and your orator alleges that there is grave danger that said Podlesaks and said Splitdorf Electric Company and Sumter Electrical Company will be able to carry out and consummate their said fraudulent plan and conspiracy unless they are prevented by this court from doing so; and your orator alleges that if said Podlesaks and said Splitdorf Electric Company and Sumter Electrical Company proceed to carry out and consummate their said fraudulent plan and scheme, your orator will be irreparably injured, and that the amount of damage and injury which your orator will sustain will not be capable of accurate or even approximate estimation by the processes of the common law, and that your orator has no adequate remedy at law.

58 XXIX. That it is essential to your orator's business and the protection of its rights under its contracts with the Podlesaks, that it should have the right to institute and maintain and control litigation to prevent the infringement of the patents covered by its said contracts; that, pursuant to, and as part and parcel of their said fraudulent arrangement and conspiracy, said Podlesaks and said Splitdorf Elec-

tric Company and Sumter Electrical Company have planned and arranged to defeat any and all such litigation by your orator, and to prevent your orator from instituting and maintaining the same; and that said Splitdorf Electric Company and Sumter Electrical Company have notified your orator that they will cause such litigation instituted by your orator to be dismissed; that in and by its said contracts with the Podlesaks, as said Splitdorf Electric Company and Sumter Electrical Company well knew when they entered into said Splitdorf Contract; your orator had and has the right to use the names of said Podlesaks, if so desired by your orator, in such litigation; and your orator further charges that unless prevented by the injunction of this court, said Splitdorf Electric Company and Sumter Electrical Company will attempt to intervene in any and all such litigation instituted by your orator and harrass and annoy your orator and endeavor to defeat its rights with respect thereto.

XXX. That your orator's business, until the last year, has not been profitable, but has sustained considerable losses, which have been made good from time to time, to a large extent, by its stockholders; that during the last year its 59 business has been more profitable, but your orator has never at any time been able to, and is not now able to pay its stockholders any dividends; that while he was employed by your orator, said Emil Podlesak received in the aggregate, as such employe, more than Seventeen Thousand Dollars (\$17,000.00), which was an aggregate sum larger than that ever received for services rendered by any other employe or officer of your orator; and in addition to the foregoing, said Emil Podlesak and Henry Joseph Podlesak have received from your orator in royalties and license fees more than Twenty-three Thousand Dollars (\$23,000.00); that on or about the 4th day of May, A. D. 1915, said Emil Podlesak tendered his resignation as an employe of your orator, and shortly thereafter ceased to be an employe of your orator; that as your orator is informed and believes, since his resignation, said Emil Podlesak has frequently boasted that he would bring about injury and distress to your orator, and that in the end he would be reinstated as an employe of your orator, but not under the management and control of its present stockholders or officers, meaning that he would bring your orator to such a condition that it would be obliged to sell out or turn over its business to some of its competitors; and your orator charges that said Emil Podlesak and Henry

Joseph Podlesak have entered into and made the said fraudulent arrangement and conspiracy with the Splitdorf Electric Company and Sumter Electrical Company in connection with the plans of said Emil Podlesak to ruin your orator's business as herein stated.

61 XXXI. That your orator is informed and believes and so states the fact to be, that the said Podlesaks and the said Splitdorf Electric Company and Sumter Electrical Company are prepared and ready to continue their said infringement and unfair competition, and unless the said Podlesaks and the said Splitdorf Electric Company and Sumter Electrical Company are restrained from so doing, your orator will suffer further great and irreparable damage from the said unlawful acts.

XXXII. That by reason of the premises your orator has been greatly injured and damaged in the sum of more than Three Thousand Dollars (\$3,000.00); and your orator further alleges that the value of your orator's rights under the Podlesak patents hereinbefore set forth is far in excess of the sum of Three Thousand Dollars (\$3,000.00).

XXXIII. That your orator's remedy for the matters and thing hereinbefore complained of is only cognizable in a court of equity.

XXXIV. To the end therefore that the said Henry J. Podlesak and the said Emil Podlesak, and the said Splitdorf Electric Company and Sumter Electrical Company may, if they can, show reason why your orator should not have relief, may it please your Honors to bring said defendants before this court by process of subpoena, there to make full, true, direct and perfect answer to the several matters and things herein set forth and charged (though not under oath, answer under oath being hereby expressly waived); and
62 that they be decreed to account for any pay over to your orator the amount of your orator's damages and a sum in excess thereof not exceeding three times the actual damages, and as well the income and profits thus unlawfully derived, or which might and otherwise would have accrued to your orator but for the unlawful and wrongful acts of the said defendants as hereinabove set forth; and that said Splitdorf Electric Company and Sumter Electrical Company be required to produce their full records and accounts of all kinds touching upon and concerning their unlawful and unauthorized acts as aforesaid, for the guidance of the court

in determining the amount justly due to your orator in consequence thereof; and further that the said Podlesaks and the said Splitdorf Electric Company and Sumter Electrical Company may be restrained from any further violation of your orator's rights in the premises, may it please your Honors to grant a writ of injunction issuing from and under the seal of this Honorable Court, perpetually enjoining and restraining said Podlesaks and said Splitdorf Electric Company and Sumter Electrical Company, their officers, employes, attorneys, agents and representatives of every kind and grade, from further manufacture, use or sale, or in any manner or in attempts thereat, or offers, negotiation or encouragement theretowards, in violation of your orator's rights as aforesaid; that the rights and duties of said defendants, and

63 each of them, under said License Contracts and said

Supplemental Agreement between your orator and said Podlesaks be ascertained and declared; that the said defendants and each of them be held and declared to occupy a relation of trust to your orator with respect to said inventions, applications for patents and patents; that said Splitdorf Contract to the extent that the same interferes with and is in opposition to the rights of your orator be held to be declared fraudulent and void; that some proper person be appointed and authorized to receive all reports and to examine your orator's books for the purpose of verifying the amount of license fees and royalties which your orator should pay from time to time under its said license contracts and said Supplemental Agreement, to receive, hold and distribute in accordance with the order of this Court any and all royalties and license fees payable by your orator thereunder; that said Podlesaks and each of them be enjoined and restrained from communicating to said Splitdorf Electric Company and Sumter Electrical Company, or either of them, or any of their officers, agents, attorneys or representatives, any information

which said Podlesaks have derived, or may derive, from
64 reports furnished to them, or to be furnished, by your orator, or from any examination or examinations of your orator's books of account, or from communicating any information which they or either of them have derived by virtue or in consequence of said Emil Podlesak's having been in the employment of your orator; that said defendants and each of them be enjoined and restrained from interfering with the customers of your orator or of your orator's trade with them, and from representing to them, or any of them,

or to others, that said Splitdorf Electric Company or Sumter Electrical Company has the right to manufacture, sell or use the inventions, or any or either of the inventions, described, set forth and claimed in the Podlesak applications for patents, or letters patent set forth and referred to in the said License Contracts between your orator and said Podlesaks; that said Splitdorf Electric Company and Sumter Electrical Company be enjoined and restrained from embodying the inventions, or any of the inventions, described, set forth and claimed in any or all of the aforesaid Podlesak patents in any Electric Generator or Ignition Device, or any device manufactured, used, sold or dealt in by them or either of them, and from placing upon or connecting with any such

Magneto Electric Generator or Ignition Device or Apparatus the name of "Podlesak"; that the defendants and each of them be enjoined and restrained from interfering with any litigation heretofore or subsequently instituted by your orator to enforce its rights under said License Contracts or under said Podlesak patents; and that said Podlesaks and each of them, and said Splitdorf Electric Company and Sumter Electrical Company, and some or each or all of them, be ordered and directed to allow your orator to use their name or names so far as may be necessary or convenient in instituting and maintaining any such litigation that the Court hold and declare and decree that said Splitdorf Electric Company and Sumter Electrical Company have not, and neither of them has, under and by virtue of said Splitdorf Contract or otherwise, any right to make, use or sell, or deal in Electric Generators, Ignition Devices, or other apparatus embodying the inventions described, set forth and claimed in the aforesaid Podlesak patents and included and embraced in the said License Contracts between your orator and said Podlesaks; and that they and each of them be enjoined from doing or attempting so to do.

And for the further protection of its rights, your orator prays that a provisional or temporary injunction or restraining order be issued commanding and restraining the defendants, their officers, employes, attorneys, agents and representatives of every kind and grade as aforesaid pending this cause; and that the relief prayed as to the appointment of some proper person to receive reports and to examine your orator's books, and to receive and hold and distribute royalties as aforesaid be granted provisionally or temporarily pending this cause; and your orator further

prays for such other and further relief as the equities of the case may require and as shall be agreeable to equity and good conscience and to your Honors may seem meet: and as in duty bound your orator will ever pray, etc.

WEBSTER ELECTRIC COMPANY,

By TOWNER K. WEBSTER

President.

LYNN A. WILLIAMS, CLIFFORD C. BRADBURY
LEVINSON, BECKER, CLEVELAND & SCHWARTZ
Solicitors for Complainant.

State of Illinois, }
County of Cook } ss.

TOWNER K. WEBSTER, being first duly sworn, deposes and says that he is President of the Webster Electric Company, the complainant in the above entitled cause; that he has read the foregoing Bill of Complaint subscribed by 67 him on behalf of the Webster Electric Company, the complainant therein named, and knows the contents thereof, and that the same is true of his own knowledge except such matters as are stated to be on information and belief, and as to these he believes it to be true.

T. K. WEBSTER

Subscribed and sworn to before me at Chicago, Illinois, this 11 day of October, 1915.

MARY A. COOK

Notary Public.

EXHIBIT A.

License Agreement.

This Agreement Made and entered into this 2nd day of Nov. 1908, by and between Tesla Emil Podlesak of Morristown, New Jersey and Henry Joseph Podlesak, of Chicago, Illinois, hereinafter called the parties of the first part, and the Webster Mfg. Co. an Illinois Corporation, of Chicago, Illinois, hereinafter called the party of the second part, Witnesseth:

That Whereas the parties of the first part have invented certain new and useful Improvement in Inductor Electric

Generators for Internal Combustion Motor Ignitors, for which they filed their original application for Letters Patent of the United States, Serial No. 76,559, for September 25, 1901, and which original application has been divided, and the Divisional Applications, Serial Nos. 413,068, 413,069, and 413,070 were filed on the 28th day of January, 1908, and which said original application and divisional applications are now pending.

And Whereas, the party of the second part is desirous of securing the exclusive right and license to manufacture, use, and sell the inventions and improvements described and claimed in said original applications and each and every of the divisional applications above referred to, and to bring and maintain suit against infringers of the patent right upon said inventions within and throughout the United States and territories thereof, and for and during the life of any patent or patents which may be granted upon the said application, or either or any of them or for the inventions or improvements described or shown or claimed in said original and
69 divisional applications, and each of them.

Now, Therefore, in consideration of One Dollar (1.00) by the party of the second part to the parties of the first part in hand paid, and of the covenants and agreements of the party of the second part hereinafter expressed and to be kept and performed, the parties of the first part do hereby grant unto the party of the second part the exclusive right and license to manufacture, use, and sell the inventions or improvements, and each and every of them, described, set forth, and claimed in said original application Serial No. 76,559, and in said divisional application Serial Nos. 413,068, 413,069 and 413,070 within and throughout the United States and the territories and possessions thereof, for and during the term of any patent or patents which may be granted upon said original applications or any of the divisions thereof; and the parties of the first part agree that they have good right and lawful authority to grant said exclusive license, and that they have not heretofore parted with any right license villege inconsistent therewith, and that they will not, while this exclusive license to the party of the second part is in force, either make, use, or sell said inventions, or grant, permit, or encourage others to do so.

Second: The parties of the first part agree to and with the party of the second part that they and each of them will aid and assist the party of the second part in the prose-

cution of the said applications and the obtaining of patents thereon, and in any interference proceeding relating to their right of priority to said inventions, and in any suit or proceeding brought under any patent to be granted there-
70 for, or for infringement of any patent other than those resulting from the Podlesak applications heretofore mentioned by reason of the manufacture, use or sale by the party of the second part of the inventions described in said applications; provided, however, that said parties of the first part shall not be called upon to pay out or expend any money in the prosecution of said applications, or in any suit or proceeding relating to the said inventions. And the parties of the first part hereby appoint the attorney for the party of the second part as their agent and attorney for the purpose of joining them as parties complainant where necessary or desirable, in any suit which the party of the second part may wish to bring on account of the infringement of any letter patent which may be granted upon the aforesaid applications, the said attorney for the party of the second part to have the power to execute as the attorney and agent of the parties of the first part any papers which may be necessary or convenient to the commencement and maintenance of any such suit, it being expressly understood and agreed, however, that the parties of the first part are not to be put to any expense or to be required to expend any moneys on account of any such infringement suits to which they may be made parties complainant, and it is expressly understood and agreed further that the said parties of the first part shall be exempt from liability in damages or court costs resulting from any law suit in which the parties of the first part may thus be joined with the party of the second part.

Third: The party of the second part agrees to mark each of the devices manufactured under this license-agree-
71 ment, with the words "Patented" and with the date of any patents resulting from the aforesaid applications which contain claims readable upon such devices.

Fourth: The party of the second part agrees to keep a correct account of all devices made and sold under this license, whether sold as a part of and attached to other machines or apparatus or not so attached, containing or embodying the said improvements or inventions, or any of them which books of account shall be open to the inspection of the parties of the first part at all reasonable times.

Fifth: The party of the second part further agrees that on and after the issue of any letters patent upon any of the aforesaid applications, or on or after the sale of any of the articles manufactured and sold under any of the aforesaid applications, if sold before the issue of the letters patent, to make quarterly reports in writing to the parties of the first part, said reports to cover the periods terminating respectively upon the last days of September, December, March and June, of each year, each report to be furnished within fifteen days from the termination of the period covered thereby, and showing the total number of the devices embodying such inventions or improvements, or any of them, which it has sold and delivered as above stated, during the preceding quarter, which reports shall be verified by the oath or affidavit of the president or some other officer of the company or corporation comprising the party of the second part.

Sixth: The party of the second part agrees that it will on the day of each and every report pay to the parties
72 of the second part jointly, as a royalty or license fee, (5%) five per cent of all moneys, or the equivalent thereof, which they may have received or that be due them from the sales of or in exchange for the devices made and sold during the preceding quarter or during that part of the first such quarter during which the patent resulting from said applications or any of them, have been in force or during which any articles shall be manufactured and sold under said applications or any of them if sold before the issue of letters patent, and it is agreed that the said devices are not be sold for less than a fair and reasonable price based upon manufacturing and trade conditions.

Seventh: If the party of the second part shall fail to keep accounts, make report and pay royalties as hereinbefore provided, or if the party of the second part shall, during the life of this agreement, manufacture and place upon the market so-called low-tension or make-and-break ignition apparatus for internal combustion engines not coming within the scope of the patents which may be secured upon the aforesaid patent applications, and which may compete with and interfere with the sales of apparatus manufactured under the claims of the aforesaid applications, or the patents which may result therefrom, or if during the year ending upon the last day of October 1909, the royalties agreed to be paid under this contract shall not amount to Two Hundred Dollars

(\$200.00), or if during the year ending on the last day of October, 1910, the royalties agreed to be paid under this contract shall not amount to Three Hundred Dollars
73 (\$300.00); or if during the year ending upon the last day of October, 1911, the royalties agreed to be paid under this contract shall not amount to Four Hundred Dollars (\$400.00), or if during the year ending upon the last day of October, 1912, the royalties agreed to be paid under this contract shall not amount to Five Hundred Dollars (\$500.00); or if during the year ending upon the last day of October, 1913, the royalties agreed to be paid under this contract shall not amount to Six Hundred Dollars (\$600.00); or if during the year ending upon the last day of October, 1914, the royalties agreed to be paid under this contract shall not amount to Seven Hundred Dollars (\$700.00); or if during the year ending upon the last day of October, 1915, the royalties agreed to be paid under this contract shall not amount to Eight Hundred Dollars (\$800.00); or if during the year ending upon the last day of October, 1916, the royalties agreed to be paid under this contract shall not amount to Nine Hundred Dollars (\$900.00); or if during the year ending upon the last day of October in any subsequent year, during the life of this contract, the royalties agreed to be paid under this contract shall not amount to One Thousand Dollars (\$1,000.00), it being understood that in the event of any deficiency in the amount of royalties earned as figured on the basis of sales made, the party of the second part may make up any such deficiency so that the total amount paid at the end of the said years shall not be less than the above mentioned minimum amount for that year; then the parties of the first part shall have the
74 right to give notice in writing to the party of the second part of its defaults, specifying in the said notice the respect or particular in which said second party is claimed to be in default, and if said second party shall not, within thirty days after the receipt of said notice, remedy or remove said default, if one there be, the parties of the first part may, in case they so desire to do, thereupon terminate said license by notice in writing to the party of the second part, but such notice of termination shall not relieve the party of the second part from the payment of any and all royalties and guaranteed amounts accrued prior to the receipt of such notice of termination.

Eighth: The party of the second part agrees that it will

diligently proceed in and about the business of making and offering for sale the inventions and improvements covered by this license; that it will advertise the same, and use all proper and reasonable efforts to create a demand therefor, and to supply the demand when created.

Finally: It is agreed that this agreement shall extend to and be binding upon the heirs, assigns, and legal representatives of the parties of the first part, and the successors and assigns of the party of the second part.

In Witness Whereof, the parties of the first part have hereunto set their hands and seals, and the party of the second part has caused its corporate name to be hereto signed by its President, and its corporate seal attested by its
75 Secretary to be hereunto affixed, all as of the day and year first above written.

TESLA EMIL PODLESAK ()

HENRY JOSEPH PODLESAK ()

WEBSTER MFG. CO.,

By T. K. WEBSTER

President.

(Seal)

Attest:

JOHN H. LENOX

Secretary.

Witness

L. F. KITCHELL

PAULINE PODLESAK

"EXHIBIT B."

Agreement

This Agreement, made and entered into on the 17th day of August, 1912, by and between Henry J. Podlesak, of Chicago, Illinois, hereinafter called the party of the first part, and Emil Podlesak of Tiffin, Ohio, hereinafter called the party of the second part, Witnesseth:—

That, in consideration of One Dollar (\$1.00) by the Party of the second part to the party of the first part into hand paid, the party of the first part does hereby sell and give to, and agrees to execute formal assignment papers when called upon to do so by, the party of the second part Forty-nine One-hundredths (49/100) of his entire interest in the below identified U. S. Letters-Patents and any such other patents

as may be granted and issued upon the below identified, pending, applications for U. S. Letters-Patents, To-Wit:—

No. 1,034,645, Aug. 6, 1912—Elect. Ignition Devices—Podlesak, H. J.

No. 1,006,678, Oct. 24, 1911—Ignition Systems—Podlesak, H. J.

No. 1,019,354, Mar. 5, 1912—Explosive Engines—Podlesak, H. J.

No. 1,037,526, Sept. 3, 1912—Explosive Engines—Podlesak, H. J.

No. 1,022,642, Apr. 9, 1912—Low Tension Spark Mach. Podlesak, H. J.

No. 947,647, Jan. 25, 1910,—Ind. Gen. for Ign. Purposes—Podlesak et al

No. 948,483, Feb. 8, 1910,—Ind. Gen. for Ign. Purposes—Podlesak et al

No. 1,003,649, Sept. 19, 1911—Ind. Gen. for Ign. Purposes—Podlesak et al

No. 1,056,360, Mar. 18, 1913—Ind. Gen. for Ign. Purposes—Podlesak et al

S. N. 618,483, filed Mar. 31/11—Ind. Gen. Ign. Purposes—Podlesak, H. J.

And the party of the first part agrees that he has good right and lawful authority to sell and give his entire rights or any portion thereof in the above identified patents and applications for patents.

2. And further, that in consideration of One Dollar (\$1.00) by the party of the first part to the party of the second part into hand paid, the party of the second part does hereby sell and give to, and agrees to execute formal assignment papers when called upon to, do so by, the party of the first part Fifty-one One-hundredths ($\frac{51}{100}$) of his entire interest, rights, in the below identified U. S. Letters-Patents and any such other patents as may be granted and issued upon the below identified applications, pending for U. S. Letters-Patents, To-Wit:

No. 1,003,501, Sept. 19, 1911—Speed Governors—Podlesak, Emil

No. 1,055,076, Mar. 4, 1913—Current Gen. & Ignitor, Etc. Podlesak, E.

No. 947,647 Jan. 25, 1910—Ind. Gen. for Ign. Purposes—Podlesak et al

No. 948,483 Feb. 8, 1910—Ind. Gen. for Ign. Purposes—Podlesak et al

No. 1,003,649, Sept. 19, 1911—Ind. Gen. for Ign. Purposes—Podlesak et al

No. 1,056,360, Mar. 18, 1913—Ind. Gen. for Ign. Purposes—Podlesak et al

S. N. 632,377, filed June 10/11—Electric Generators,—Podlesak, Emil

S. N. 639,738, filed July 21/11—Magneto Machines—Podlesak, Emil

S. N. 668,153, filed Dec. 27/11—Magneto Machines—Podlesak, Emil

S. N. 734,143, filed Nov. 29/12—Ign. Dev. for Explo. Eng.—Podlesak, Emil

and the party of the second part agrees that he has good right and lawful authority to sell and give his entire right or any portion thereof in the above identified patents and applications for patents.

3. It is further agreed that the formal assignment papers may, if necessary or advisable, be made and executed in respect to any one or more of the herein identified patents or patents that may issue on any of the herein identified applications for patents, this prior to such time when all of said pending applications have matured into patents or have been abandoned.

77 Page 2—Agreement—H. J. & E. Podlesak—Aug. 17, 1912.

4. It is further agreed that the party of the first part and the party of the second part shall each receive Fifty-Hundredths (50/100) of all the moneys and such other valuable considerations that may be obtained and received as net proceeds from the sale of any or all, of the above identified patents and applications for patents.

5. It is further agreed that the expenses of any suit or litigation that may be brought because of infringement of any of the above identified patents, and any patent that may be granted and issued on any of the above identified applications, shall be equally borne by each of the party hereto; provided, that both parties hereto agree to join together as party complainants before any such is commenced.

6. It is further agreed that the expenses of prosecuting the above identified pending applications for Letters-Patents shall be borne equally by each of the party hereto.

7. It is lastly agreed that the covenants herein shall be binding upon the heirs, assigns, and legal representatives of the parties hereto, and that all prior agreements by and between the parties hereto in respect to any of the above identified patents or applications relating thereto are hereby terminated and cancelled.

In presence of:

HENRY J. PODLESAK,
Party of the first part.

In presence of:

EMIL PODLESAK,
Party of the second part.

State of Illinois }
County of Cook } ss

On this 4th day of May, 1915, personally appeared before us Henry J. Podlesak, personally known to me to be the same person described in and who executed the foregoing assignment and agreement, and who acknowledged to me that he executed the same for the uses and purposes therein mentioned.

Witness my hand and notarial seal the day and year last above written.

(Seal) MARY A. COOK
Notary Public.

State of Illinois }
County of Cook } 'ss

On this 4th day of May, 1915, personally appeared before me Emil Podlesak, to me known to be the same person described in and who executed the foregoing assignment and agreement, and who acknowledged to me that executed the same for the uses and purposes therein mentioned.

Witness my hand and notarial seal the day and year last above written.

(Seal) MARY A. COOK
Notary Public.

(EXHIBIT C)

License Agreement.

This Agreement made and entered into this 5th day of February, 1914, by and between Emil Podlesak of Racine, Wisconsin, and Henry Joseph Podlesak of Chicago, Illinois, hereinafter called the parties of the first part, and The Webster Electric Company, a corporation of the State of West Virginia, whose principal office is in the City of Chicago, County of Cook, and State of Illinois, hereinafter called the party of the second part, Witnesseth:

That Whereas the parties of the first part, having invented certain new and useful improvements in Inductor Electric Generators for Internal Combustion Motor Ignition, for which certain Letters-Patent of the United States of America have been granted, which all they jointly own, to-wit:—

Number 947,647, issued January 25th, 1910 Inductor Generators for Ignition purposes.

Number 948,483, issued February 8th, 1910, Inductor Generators for Ignition Purposes,

Number 1,003,649 issued September 19th, 1911, Inductor Generators for Ignition purposes.

And Whereas the party of the second part is desirous of securing exclusive right and license to manufacture, use and sell the inventions and improvements, described and claimed in above said patents, all or any of them, the validity of which is admitted, and to bring and maintain suits against infringers of the patent rights covering the said inventions, within and throughout the United States of America and Territories thereof, and for and during the life of any and all of the patents:

79 Now, Therefore, in considerations of the One Dollar (\$1.00) by the party of the second part to the parties of the first part, in hand paid and of the covenants and agreements of the party of the second part, hereinafter expressed and to be kept and performed, the parties of the first part do hereby grant unto the party of the second part, the exclusive right and license to manufacture, use and sell the inventions or improvements, and each and every one of them, described, set forth and claimed in said patents, numbers 947,647, 948,483, and 1,003,649, within and throughout the United States of America and Territories and Possessions thereof, for and

during the term of said patents or any of them; and the parties of the first part agree that they have good right and lawful authority to grant said exclusive license, and that they have not heretofore parted with any right, license or privilege inconsistent therewith, and that they will not, while this exclusive license to the party of the second part is in force, make, use or sell said inventions or grant, or give permission to, or encourage, others to do so.

Second: The parties of the first part agree to and with the party of the second part that they and each of them will aid and assist the party of the second part in any suit or proceeding brought under any of the said patents, or for the infringement of any patents by reason of the manufacture, use or sale, by the party of the second part of the inventions described in said patents; provided, however, that said parties of the first part shall not be called upon to pay out or expend any money in any suit or proceeding relating to the said inventions, and the parties of the first part hereby appoint

80 the attorney for the party of the second part as their agent and attorney for the purpose of joining them as parties complainant where necessary desirable, in any suit which the party of the second part may wish to bring on account of the infringement of any of said letters-patent, the said attorney for the party of the second part to have the power to execute as the attorney and agent of the parties of the first part any papers which may be necessary or convenient to the commencement and maintenance of any such suit, it being expressly understood and agreed, however, that the parties of the first part are not to be put to any expense or to be required to expend any moneys, on account of any such infringement suits to which they may be made parties complainant, and it is expressly understood and agreed, further, that the said parties of the first part shall be exempt from liability in damages or court costs resulting from any law suits in which the parties of the first part may thus be joined with the party of the second part, the party of the second part agreeing to assume the payment of any and all damages and court costs that may result from any such suits.

Third: The party of the second part agrees to mark each of the devices manufactured under this license agreement, with the words "Patented" with the surname of the invent-

ors, and with the dates of any of the said patents containing claims readable upon such devices.

Fourth: The party of the second part agrees to keep a correct account of all devices made and sold under this license whether sold as a part of and attached to others machines or apparatus or not so attached, containing or embodying the above said improvements or inventions, or
81 any of them which books of account shall be open to the inspection of the parties of the first part or their attorney or agent at all reasonable times.

Fifth: The party of the second part further agrees to make quarterly reports, in writing, to the parties of the first part, said reports to cover periods terminating respectively upon the last days of September, December, March and June of each year, each report to be furnished within fifteen days from the termination of the period covered thereby, and showing the total number and selling prices of devices embodying the improvements shown and claimed in said patents or any of them, which it has sold and delivered as above stated, during the preceeding quarter, which report, when required, shall be verified by the oath or affidavit of the president or some officer of the company or corporation comprising the party of the second part.

Sixth: The party of the second part agree that it will on the day of each and every report pay to the parties of the first part, jointly, as a royalty or license fee, five per cent (5%) of all moneys or the equivalent thereof, which they may have received or that may be due them from the sales of or in exchange for the said devices sold and delivered during the preceding quarter. It is further expressly understood and agreed that the said devices manufactured embodying above improvements, or any of them, are not to be sold for less than a fair and reasonable price, based upon manufacturing and trade conditions.

Seventh: If the party of the second part fails to keep accounts, make reports and pay royalties as hereinbefore provided, or if during the year ending upon the last days of September, 1914 the royalties agreed to be paid under this contract shall not amount to Twenty-five Hundred Dol-
82 lars (\$2,500.00) or if during the year ending upon the last day of September in subsequent years, during the

life of this contract, the royalties agreed to be paid under this contract shall not amount to Twenty-five Hundred Dollars (\$2,500.00) it being understood that in the event of any deficiency in the amount of royalties, earned as figured on the basis of sales made, the party of the second part may make up any such deficiency so that the total amount paid at the end of each year shall not be less than Twenty-five Hundred Dollars (\$2,500.00), or, if the party of the second part fails or refuses to take proper steps to stop infringements, if any there should be and become known to it, of any of the claims of any of said patents, or if it should not manufacture and sell for use at least five thousand (5000) pieces of any or more of the herein said devices during each and every year of the life of this contract, then the parties of the first part shall have the right to give notice, in writing, to the party of the second part, of its default, specifying in the said notice the respect or particular in which said second party is claimed to be in default, and if said second party shall not, after the receipt of said notice, remedy such default within thirty days, if one there be, the parties of the first part, may, in case they so desire to do, thereupon terminate said license, by notice in writing, to the party of the second part, but such notice or termination shall not relieve the party of the second part from the payment of any and all royalties and guaranteed amounts accrued prior to the receipt of such notice of termination or such amounts as may have accrued prior to the termination of manufacturer of said devices.

83 Eighth: The party of the second part agrees that it will diligently proceed in and about the business of making and offering for sale one or more of the inventions and improvements covered by this license; that it will advertise the same, and use all proper and reasonable efforts to create a demand therefor, and to supply the demand when created.

Finally: It is agreed, that this agreement shall extend to and be binding upon the heirs, assigns, and legal representatives of the parties of the first part, and the successors and assigns of the party of the second part.

In Witness Whereof, the parties of the first part have hereunto set their hands and seals, and the party of the second part has caused its corporate name to be hereto signed by its President, and its corporate seal attested by its Secretary to

Exhibit D.

be hereunto affixed, all as of the day and year first above written.

(Signed) HENRY JOSEPH PODLESAK' (Seal)

(Signed) EMIL PODLESAK (Seal)

(Signed) THE WEBSTER ELECTRIC Co (Seal)

By T. K. WEBSTER.

President.

Attest:

S. A. LOEB

Acting Secretary

Witnesses:

KATE DEMPSEY

ARTHUR L. SCHWARTZ.

(EXHIBIT D.)

License Agreement

(Shop Right)

This Agreement made and entered into this 5th day of February 1914, by and between Emil Podlesak of Racine, Wisconsin, and Henry Joseph Podlesak, of Chicago, Illinois, hereinafter called the parties of the first part, and The Webster Electric Company, a corporation of the State of West Virginia, whose principal office is in the City of Chicago, County of Cook, and State of Illinois, hereinafter called the party of the second part, Witnesseth:

That Whereas the parties of the first part having invented certain and various new and useful improvements in Ignition Devices for Gas Engines, for which they jointly own certain Letters Patent and pending applications for Letters Patent of the United States of America, described as follows:

No. 1,022,642 issued April 9, 1912, Low Tension Sparking Mechanism, (Henry J. Podlesak).

No. 1,055,076 issued March 4, 1913 Current Generators and Ignitors, (Emil Podlesak).

No. 1,056,360, issued March 18, 1913, Inductor Generators for Ignition purposes.

Application, Serial No. 734,143, filed November 29, 1912, Ignitor Devices for Explosive Engines.

Application, Serial No. 668,153, filed December 27, 1911, Magneto Machines.

Application, Serial No. 639,738, filed July 21, 1911 Magneto machines:—

85 And Whereas the party of the second part is desirous of securing a shop right and license to manufacture, use, and sell the inventions and improvements, described and claimed in above said patents, and applications for patents, all or any one of them, the validity of which patents, granted or to be granted, is admitted and to bring and maintain suits against infringers of the patent rights covering the said inventions, within and throughout the United States of America and Territories thereof, and for and during the life of any and all of the patents, and patents that may be granted, on any of the applications described below, or any of them:

Now, Therefore in consideration of One Dollar (\$1.00) by the party of the second part to the parties of the first part, in hand paid, and of the covenants and agreements of the party of the second part, hereinafter expressed and to be kept and performed, the parties of the first part do hereby grant unto the party of the second part a shop right and license to manufacture, use, and sell the inventions or improvements, and each and every one of them, described, set forth and claimed in said patents, numbers 1,022,642, 1,055,076 and 1,056,360, and said applications, serial numbers 734,143; 668,153; and 639,738 and any division or divisions thereof, within and throughout the United States of America and Territories and Possessions thereof, for and during the term of said patents or any of them; and the parties of the first

part agree that they have good right and lawful author-
86 ity to grant said shop right and license, and that they have not heretofore parted with any right, license or privilege inconsistent therewith and that they will not, while this shop license to the party of the second part is in force, give or grant shop licenses to others to make, use, or sell hereinsaid inventions, expressly reserving, however the right to themselves to make, use and sell the hereinsaid inventions.

Second: The parties of the first part agree to and with the party of the second part that they, and each of them will aid and assist each other in the prosecution of said applications and the obtaining of patents thereon and in any interference proceeding relating to their right of priority to said inventions, and in any suit or proceeding brought under any of the said patents or for the infringement of any patents by reason of the manufacture, use or sale, by the party of the second part of the inventions described in said patents or applications; provided, however, that said parties of the first part shall not be called upon to pay out or expend any money

in any suit or proceeding relating to the said inventions, and the parties of the first part hereby appoint the attorney for the party of the second part as their agent and attorney for the purpose of joining them as parties complainant where necessary or desirable, in any suit which the party of the second part may wish to bring on account of the infringement of any of said Letters Patent or any patent which may be granted upon their aforesaid applications, the said

attorney for the party of the second part to have the
87 power to execute as the attorney and agent of the parties of the first part any papers which may be necessary or convenient to the commencement and maintenance of any such suit, it being expressly understood and agreed, however, that the parties of the first part are not to be put to any expense or to be required to expend any moneys, on account of any such infringement suits to which they may be made parties complainant, and it is expressly understood and agreed, further, that the said parties of the first part shall be exempt from liability in damages or court costs resulting from any law suits in which the parties of the first part may thus be joined with the party of the second part, the party of the second part agreeing to assume the payment of any and all damages and court costs that may result from any such suits.

Third: The party of the second part agrees to mark or label each of the devices manufactured under this license agreement in conformity with the provisions of Section 4900 United States Revised Statutes and with the surname of the inventors.

Fourth: The party of the second part agrees to keep a correct account of all devices made and sold under this license, whether sold as a part of and attached to other machines or apparatus or not so attached, containing or embodying the above said improvements or inventions, or any of them, which books of account shall be open to the inspection of the parties of the first part of their attorney or agent at all reasonable times.

Fifth: The party of the second part further agrees to make quarterly reports, in writing, to the parties of the
88 first part, said reports to cover the periods terminating respectively upon the last days of September, December, March and June of each year, each report to be furnished within fifteen days from the termination of the period covered thereby, and showing the total number of devices embodying the improvements shown and claimed in said patents granted or to be granted, or any of them, which it has sold and de-

livered as above stated, during the preceding quarter, which reports shall also show the names of the purchasers or devices embodying the inventions or any of them, set forth and claimed in said patents, Nos. 1,022,642 and 1,055,076, and the number of such devices sold to each purchaser, and shall be verified by the oath or affidavit of the president or some other officer of the Company or corporation comprising the party of the second part, if so required by the parties of the first part.

Sixth: The party of the second part agrees that it will, except as hereinafter provided, use and devices manufactured under this shop license only in connection with, or for repairs to, the device manufactured under license which is covered by the agreement made on February 5th, 1914, by which the parties of the first part give to the party of the second part the exclusive and sole right to manufacture ignition devices covered by patents No. 947,647, of January 25, 1910, Inductor Generators for Ignition Purposes, No. 949,483, issued February 8, 1910. Inductor Generators for Ignition

Purposes, and No. 1,003,649, issued September 19, 1911.
89 Inductor Generators for Ignition purposes, and that whenever the devices covered by this shop right and license are made and sold and delivered not as a part, of, or for use in connection with, the devices manufactured and sold under the aforesaid exclusive license dated February 5th, 1914, then the party of the second part agrees that it will on the day of each and every report pay to the parties of the first part, jointly as a royalty or license fee, five per cent (5%) of all moneys or the equivalent thereof, which they may have received or that may be due them from the sales of or in exchange for the devices covered by this shop right and license sold and delivered during the preceding quarter. It is further expressly understood and agreed that the said devices manufactured embodying above improvements, or any of them, are not to be sold for less than a fair and reasonable price, based upon manufacturing and trade conditions.

Seventh: If the part of the second part shall fail to keep accounts, make reports, and pay royalties, all as hereinbefore provided, then the parties of the first part shall have the right to give notice, in writing, to the party of the second part, of its default, specifying in the said notice the respect or particular in which said second party is claimed to be in default, and if said second party shall not within thirty (30) days after the receipt of said notice, remedy or remove said

default, if one there be, the parties of the first part may, in case they so desire to do, thereupon terminates said license by notice, in writing, to the party of the second part, 90 but such notice or termination shall not relieve the party of the second part from the payment of any and all royalties that may, as hereinbefore provided, have accrued prior to the receipt of such notice of termination or such amounts as may have accrued prior to the termination of manufacture of said devices.

Eighth: The party of the second part, with the approval, in writing, of the parties of the first part, shall have right to grant shop right or license for the manufacture, use and sale of devices embodying the invention described and claimed in said patents No. 1,022,642 and No. 1,055,076, to makers of, or dealers in, gas engines, and gas engine accessories, but such shop rights or licenses so granted by the party of the second part shall be on and with the same terms and limitations as hereinbefore set forth, namely; that the devices made under such shop right license shall be used only in connection with, or for repairs for or to, devices made under the hereinbefore mentioned patents no. 947,647,—948,483,—1,003,649, and 1,056,360, and any patents that may be granted on the hereinbefore mentioned applications Serial Nos. 734,143, 668,153, and 639,738, or any of them, and in no other way. The parties of the first part may approve any such shop right or license, to be granted by the party of the second part, either personally or by attorney, or agent.

Ninth: The party of the second part agrees that it shall not permit or encourage other parties to manufacture, use, or sell devices covered by hereinbefore mentioned patents, 91 ents, or patents that may be granted on hereinsaid applications, or any of them, except as, and on terms and limitations hereinbefore set forth, relative to said shop licenses under patents No. 1,022,642 and No. 1,055,076. It is further agreed and understood that this shop license becomes terminated in the case of event the license given in the said agreement of February 5, 1914, becomes, terminated by manner therein provided for.

Finally, It is agreed that this agreement shall extend to and be binding upon the heirs, assigns, and legal representatives of the parties of the first part, and the successors and assigns of the party of the second part.

In Witness Whereof, the parties of the first part have hereunto set their hands and seals, and the party of the second part has caused its corporate name to be hereto signed

by its President, and its corporate seal attested by its Secretary to be hereunto affixed, as all of the day and year first above written.

HENRY JOSEPH PODLESAK (Seal)
 EMIL PODLESAK (Seal)
 THE WEBSTER ELECTRIC COMPANY
 By T. K. WEBSTER
 President.

Attest.

S. A. LOEB
Acting Secretary.

Witnesses:

KATE DEMPSEY
 ARTHUR L. SCHWARTZ.

Supplemental Agreement

This Agreement made and entered into this 20th day of January, 1915, by and between Emil Podlesak, of Racine, Wisconsin, and Henry Joseph Podlesak of Chicago, Illinois, hereinafter called the parties of the first part, and the Webster Electric Company, a Corporation of the State of West Virginia, have a place of business in the City of Racine, and State of Wisconsin, hereinafter called the party of the second part:

Witnesseth, that

Whereas the parties hereto have entered into a certain exclusive license agreement under the United States Letters-Patents Nos. 947,647, 948,483, and 1,003,649 and a certain shop right license agreement under United States Letters-Patents Nos. 1,022,642, 1,055,076, 1,056,460, 1,101,956, 1,098,052 and 1,098,754, both dated the 5th day of February 1914, and

Whereas under the licenses granted by the parties of the first part to the party of the second part in the said license agreements of February 5th, 1914, the party of the second part has engaged in the manufacture and sale of magnetos and ignition apparatus embodying the inventions described and claimed in the United States Letters-Patents under which licenses have been granted as aforesaid; and

Whereas it has been found expedient to sell ignition equipments combining the magneto generators described and claimed in the United States Letters-Patents Nos. 947,647,

948,483, and 1,003,649, under which royalties are to be paid by the party of the second part to the parties of the first part under said exclusive license agreement of February 5th, 1914, and certain of the features described and claimed in the patents and applications for patents enumerated in the aforesaid shop right license agreement of February 5th, 1914, particularly the ignitor plug, mechanism described and

93 claimed in the United States Letters Patent No. 1,022,642, and the ignitor bracket mechanism described and claimed in the United States Letters-Patent No. 1,055,076; and

Whereas, therefore, it has become difficult to apportion the prices received by the party of the second part for said apparatus between the magneto generators and the equipment sold in combination therewith, and has theretofore become difficult to determine the amount of royalties to be paid to the parties of the first part under the said exclusive license agreement of February 5th, 1914; and

Whereas it is the desire of the parties of the first part and of the party of the second part hereto to simplify the accounting necessary to determine the amount of royalties to be paid by the party of the second part to the parties of the first part under the said exclusive license agreement of February 5th, 1914;

Now, Therefore, in consideration of the premises and of the mutual undertakings of the parties and of One Dollar (\$1.00) in hand paid by each of the parties to the other and receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. In lieu of certain royalties to be paid as provided for in the said exclusive license agreement under the United States Letters-Patents Nos. 947,847, 948,483, and 1,033,649, the parties of the first part agree to accept and the party of the second part agrees to pay to the parties of the first part; a royalty or license fee of Thirty-seven and one-half cents (37½c) each on all magneto generators known and designated as type Jz, type Jy, type Pz, and Type Py manufactured under said Letters-Patents Nos. 947,647, 948,483, and 1,003,649, or any of them, when sold in, or for use in, combination with said plug and bracket manufactured under said letters-patent Nos. 1,022,642 and 1,055,076, or either of them; a 94 royalty or license fee of twenty Cents (20c) each on all magneto generators known and designated as type K and type L manufactured under said Letters-Patents Nos. 947,647, 948,483, and 1,003,649, or any of them, when sold in, or for use in, combination with said plug and bracket manufactured

under said Letters-Patents Nos. 1,022,642 and 1,055,076 or either of them; and a royalty or license fee of eighteen Cents (18c) each on all magneto generators known and designated as type M manufactured under said Letters-Patent Nos. 947,-647, 948,483, and 1,003,649, or any of them when sold in or for use in combination with said plug and bracket manufactured under said Letters-Patents Nos. 1,022,642, and 1,055,076, or either of them.

2. It is mutually understood and agreed that in the case or event any additional type or types of magneto generators, embodying the inventions described and claimed in said Letters-Patents Nos. 947,647, 948,483, and 1,003,649, or any of them, be in the future developed and put on the market, by the party of the second part, in, or for use in combination with said plug and bracket manufactured under said Letters-Patents Nos. 1,022,642 and 1,055,076 or either of them, the royalty or license fee to be paid on each magneto generator of said such additional type or types shall be determined and fixed by and upon the selling price of the combined structure of such additional type of magneto generators with said plug and bracket in comparison with the current selling prices of the hereinbeforesaid combined structures of the present types of magneto generators—namely, Jz, Jy, Pz, Py, K. L. and M, with said plug and bracket, and that said royalty or license fee to be paid on each magneto generator of the said additional type, or types, shall be same as that above provided for to be paid on any of said existing type of magneto generator the highest selling price of which in combination with said plug and bracket, equals or the least exceeds the highest selling price of said additional type of magneto generator combined with said plug and bracket.

95 3. It is mutually understood and agreed that the amount of royalties or license fees to be paid under said exclusive license agreement and supplemented by this agreement shall be not less than Five Thousand Dollars (\$5000.00) during and for each year, during the life of said exclusive license agreement, each said year ending on the last day of September, as provided in said exclusive license agreement.

4. It is mutually understood and agreed that this supplemental agreement shall be regarded and construed merely as fixing arbitrary the rate of royalty or license fee to be paid on each said device manufactured under said exclusive license agreement and sold as hereinbefore set forth; and as increasing the minimum annual amount of royalties or license fees to be paid under said exclusive license agreement; and

Exhibit F.

except in these two particulars this supplemental agreement is not to and does not modify or alter or change in any respect the terms and conditions of said exclusive license agreement and of said shop right license agreement, both dated February 5th, 1914; and it is further understood and agreed that this supplemental agreement becomes terminated in the case or event the said exclusive license agreement becomes terminated by manner therein provided for.

Finally, it is agreed that this supplemental agreement shall extend to and be binding upon the heirs, assigns, and legal representatives of the parties of the first part, and successors and assigns of the party of the second part

In Witness Whereof, the parties of the first part have hereunto set their hands and seal, and the party of the second part has caused its corporate name to be hereunto signed by its President, and its corporate seal attested by its Secretary to be hereunto affixed, all as of the day and year first above written.

EMIL PODLESAK (Seal)

HENRY JOSEPH PODLESAK (Seal)

THE WEBSTER ELECTRIC COMPANY

By S. A. LOEB
Vice-President.

(Corporate Seal)

Attest:

EMIL PODLESAK
Secretary.

“EXHIBIT F.”

File No. 2425.

Memorandum of Agreement made and entered into this 4th day of September, A. D. 1915, by and between Emil Podlesak of Racine, Wisconsin, and Henry Joseph Podlesak of Chicago, Illinois, parties of the first part, and the Splitdorf Electric Company, a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business located in the City of Newark, County of Essex, in said State, and the Sumter Electrical Company, a corporation organized and existing under the laws of the State of South Carolina, having its principal office and place of business in the City of Sumter, County of Sumter, in said State, said corporations jointly parties of the second part;

Whereas the parties of the first part are the present joint

owners of certain inventions relating to inductor electric generators for internal combustion motor ignition, and of certain letters patent granted therefor as follows:

No. 949,647, issued January 25, 1910; No. 948,483, issued February 8, 1910; and 1,003,649, issued September 19, 1911, all for Inductor Generators for Ignition purposes, and of certain other inventions relating to ignition devices for gas engines, for which applications have been filed and letters patent have been granted as follows: No. 1,022,642, issued April 9, 1912, Low Tension Sparkling Mechanism, No. 1,055,076, issued March 4, 1913, reissued February 9, 1915, as No. 13,878, for Current Generators and Igniters; No. 1,056,360, issued March 18, 1913, for Inductor Generators for Ignition Purposes, applications serial No. 734,143 filed November 29, 1912, for Igniter Devices for Explosive Engines, patented June 30, 1914, as No. 1,101,956; application Serial No. 639,738, filed July 31, 1911, Magneto Machine, patented May 26, 1914, as No. 1,098,052, applications serial No.

668,153, filed December 27, 1911, as a division of original 97 application No. 639,738, patented June 2, 1914, as No. 1,098,754; and application serial No. 668,153, filed December 27, 1911, Magneto Machines, patented as No. 1,098,754; and

Whereas said parties of the first part have heretofore granted licenses under said patents to the Webster Electric Company of Racine, Wisconsin, as evidenced by three certain written instruments dated respectively the 5th day of February 1914, the 5th day of February 1914, and the 20th day of January 1915, of which true copies are hereto annexed and marked respectively Exhibits A, B, and C; and

Whereas the parties of the second part having been nominated by F. C. Manning under his opinion dated August 20, 1915, and being his assignees thereof, are desirous of acquiring the entire interest in the aforesaid inventions, letters patent and applications, together with all rights to manufacture, use and sell said inventions subject only to the licenses heretofore granted to the Webster Electric Company, also the entire interest of the parties of the first part in the aforesaid agreements with the said Webster Electric Company and in the business of manufacturing and selling magneto ignition apparatus for internal combustion engines, together with the good will appertaining to the said business of the parties, of the first part, in part represented by the association of their names or either of them with said business or with apparatus manufactured or to be manufactured and

sold under the aforesaid letters patent and applications on said agreements; also all reissues granted or to be granted or said letters patent and patents granted on said applications, as well as any improvements on said inventions, the applications and patents therefor.

98 Now therefore be it known that for and in consideration of the sum of Twenty-five Thousand Dollars (\$25,000.00) to them in hand paid, the receipt of which is hereby acknowledged, and of the further considerations hereinafter set forth, the parties of the first part have sold, assigned, transferred, set over and conveyed, and by these presents do hereby sell, assign, transfer, set over and convey unto the parties of the second part jointly the entire right, title and interest in, to and under each and every the hereinbefore mentioned inventions and improvement, letters patent, and applications for letters patent, with all divisions reissues and extensions thereof, including the right to sue and recover to their own use for infringement of the same, whether committed before or after the date hereof, this assignment being subject only to the licenses heretofore granted to the Webster Electric Company, also the entire right, title and interest in, to and under or arising out of the aforesaid license agreements with the Webster Electric Company, and the Royalties and other profits flowing therefrom after the date hereof, as well as the entire interest and good will of the parties of the first part in the business of manufacturing and selling magneto ignition apparatus for internal combustion engines and any other apparatus described or claimed in said letters patent and applications and included in said license agreements; the same to be held and enjoyed by the said parties of the second part, or the survivor of them, their or its successors or assigns, as fully, freely and entirely as they might have been held and enjoyed by the parties of the first part had not this assignment and sale thereof been made.

99 It is understood and agreed that the preparation and the prosecution of all applications for patents on inventions hereby conveyed or agreed to be conveyed, including both pending and new applications, original, divisional, reissues, and extension, shall be by the attorney or attorneys for the parties of the second part, on their designation, and the parties of the first part hereby appoint said attorneys and their attorneys for such purpose, and agree that they will at all times keep the parties of the second part or their said attorneys fully informed as to inventions they may make which might fall within the terms of this agreement, and

that they will at all times aid and assist in the preparation and prosecution of said applications, and in any proceedings ancillary thereto, all, however, without expense to themselves for costs or attorneys's fees, said expense to be borne entirely by the parties of the second part. The parties of the first part also agree that upon demand of the parties of the second part or said designated attorneys, they will execute assignments satisfactory to said attorneys of all said inventions and improvements not herein specifically designated but included within the scope hereof.

In further consideration of the said transfer and the faithful performance by the parties of the first part of the covenants herein contained, the parties of the second part for themselves, their survivor, successors or assigns, agree to pay an additional sum of Forty Thousand Dollars (\$40,000.00) in four equal installments of Ten Thousand Dollars (\$10,000.00) each, payable one installment on the first day of October of each of the years, 1916, 1917, 1918 and 1919.

In further consideration of the payment to them made, which includes a special sum of Five Thousand Dollars 100 (\$5,000.00) for this purpose, which said sum is deemed by the parties hereto to be adequate in the premises, and as ancillary to the foregoing assignment and sale, and in order to protect the parties of the second part, their survivor, successors and assigns in the full and complete realization and enjoyment of the rights, title and interest thus conveyed, the parties of the first part do hereby jointly and severally covenant and agree that they and each of them shall not engage in the manufacture or sale of magneto ignition apparatus for internal combustion engines for and during the period of five years from and after the date of these presents, throughout the territory covered and included within the monopoly granted by the aforesaid letters patent, it being the intention of the parties hereto that the field of business of the parties of the second part includes the whole of and is co-extensive with said territory.

It is understood and agreed that nothing in this covenant shall operate to prevent the parties of the first part from engaging in business involving either the use of a magneto generator for other purposes than internal combustion engine ignition, or involving the accomplishment of internal combustion engine ignition by other means than magneto generator or dynamo; provided said business does not involve any infringement upon any claims of the patents hereby as-

signed or agreed to be assigned to the parties of the second part, the validity of which is expressly admitted and warranted by the parties of the first part. It is further understood and agreed that in the event of any breach of this covenant not to compete by the parties of the first part or either of them, they shall thereupon become jointly and severally liable to the parties of the second part in the sum of Five

Thousand Dollars (\$5,000.00) as liquidated damages, and 101 in addition thereto for all actual damages in excess thereof, sustained by the said parties of the second part, their survivor, successors or assigns, by reason of said breach, such damage to be assessed and determined by a court of proper jurisdiction and pending such determination all sums remaining in the hands of the parties of the second part and which would otherwise be due and payable under this agreement to the parties of the first part to be retained by the parties of the second part as security for the payment of the aforesaid damages.

The parties of the first part hereby warrant that they have the right to manufacture, use and sell the inventions described and claimed in letters patent No. 1,022,642, April 9, 1912, No. 1,055,076, March 4, 1913, reissued February 9, 1915 as No. 13,878 and 1,056,360, March 18, 1913, also applications serial No. 734,143, filed November 29, 1912, serial No. 668,153, filed December 27, 1911, and serial No. 639,738, filed July 21, 1911; that they are the owners of the said letters patent, and also of all the other letters patent and inventions mentioned in the aforesaid agreements with the Webster Electric Company, Exhibits A, B, and C; that they have the right to make this assignment, including all of said patents and agreements; that they have not previously made any assignment or granted any license, shop right or other rights of any kind or character, of, to, in or under the aforesaid patents, saving and excepting only the rights granted under agreements Exhibits A and B to the Webster Electric Company, and that when they made and entered into said agreements with the said Webster Electric Company, it was understood and agreed on the part of the Webster Electric Company that the parties of the first part hereto reserved and retained to and in themselves all the rights, title and interest herein and hereby warranted and that the same were assignable by the parties of the first part at their own will and pleasure.

102 It is understood and agreed that this contract is made under and to be construed according to the laws of the

State of New Jersey, and is fully executed and delivered in the city of Newark, in said State.

In witness whereof the parties of the first part have hereunto severally subscribed their names and affixed their seals in triplicate this 4th day of September A. D. 1915; and the parties of the second part have severally caused their names to be signed and their corporate seals to be affixed hereto at the times and places indicated below, by their respective officers to that end duly empowered.

(Signed) HENRY J. PODLESAK (Seal)

(Signed) EMIL PODLESAK (Seal)

SPLITDORF ELECTRIC COMPANY

By.....
President.

Place.....

Date

Attest:

.....
Secretary.

SUMTER ELECTRICAL COMPANY

By.....
President.

Place.....

Date

Attest:

.....
Secretary.

City of Washington }
District of Columbia } ss:

On this 4th day of September, 1915, before me personally appeared Emil Podlesak and Henry Joseph Podlesak, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

.....
Notary Public.

103 State of }
County of } ss:

I, _____ a Notary Public in and for said county in said State, hereby certify that whose name as President of the Splिटdrof Electric Company, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation. Given under my hand this _____ day of September 1915.

Notary Public.

State of }
County of } ss:

I, _____ a Notary Public in and for said county in said State, hereby certify that Charles Thomas Mason, whose name as President of the Sumter Electrical Company, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation. Given under my hand this _____ day of September, 1915.

Notary Public.

104

"EXHIBIT G."

April 8, 1915.

Mr. H. J. Podlesak,
1636 Millard Avenue,
Chicago, Illinois.

Dear Sir:—

In going over the matter of having the royalties for the last quarter under your contract with the company figured, we find that we had, under date of April 29th, 1914, in a letter to our president, Mr. T. K. Webster, a statement from our attorney that we should not pay, and you were not en-

titled to, royalty on spare or repair parts, though for some reason according to our former statements, this practice has not been followed, and Emil does not seem to know much about it.

Also we notice that on the "G" and "F" machines which we have been taking back from the Harvester Company and on which we have not been having some exchange arrangement for new machines, that we have deducted the amount from the total to figure royalties on, based on the price which we allow the Harvester Company on the machines. Unless there was some mutual arrangement entered into in regard to this, and that fact we are not unable to learn from your brother or anybody else here, it does not seem to the writer that this is a just deduction.

On the "G" and "F" type machines which we take back and make replacements of "J" and "K" machines, we think it would be fair to figure these both ways. For an example:— We are making the Harvester branches a special proposition where their customers are complaining of "G" and "F" machines, in which we furnish them the "K" and "JY" machines in exchange at a reduced price over what we sell them for at the works regularly, taking the old "G" and "F" machines as the balance of the payment. In these cases the full royalty would be allowed you on the "JY" and "K" and the royalty formerly paid on the "G" and "F" figured back against this. In all these subjects, which we have had up with Emil, the writer understands he agrees with his views in the matter.

105 We are calling this to your attention as we do not know when we will have an opportunity to take this up with our board of directors, the annual meeting having again been postponed. We would very much appreciate having an expression from you in regard to this.

Thanking you in advance for your early attention, and awaiting your further esteemed favors, we are

Yours very truly,

THE WEBSTER ELECTRIC CO.

By WALTER BROWN,

Gen. Mgr.

106

Chicago, April 24, 1915.

Webster Electric Company,
Racine, Wisconsin.

Mr. Walter Brown, Gen. Manager.

Dear Sir:

Referring to the matter of returned magnetos, spare parts, etc., as per your letter of the 8th instant, I have not up to this date had the opportunity to take this matter up with Mr. Lynn A. Williams, your attorney. You will recall my mentioning, during our talk in your office some few days ago, that I would try to first go over the matter with him. But it seems that when I call at his office he is either out or long busy; and lately I have been and still am kept quite busy and away.

On that matter of repairs, that is repairs proper, repairs that you may make on any item of Webster Ignition apparatus at your factory, branch house, or service station, by replacing worn parts or broken parts, such repairs are not subject to royalty fees, under the law. When however it comes to the matter of spare parts, stock of which you may sell to engine makers, jobbers, or anybody, the thing becomes a different question, as these spare parts are not repairs, necessarily, but just parts, merchandise. For example, some of your customers may order a stock of the Jz gage and starting levers, along with a few other parts; the levers may find their way, land, on Witchcraft magnetos. We could not very well collect royalties from the users of these particular repair parts, because they were lawfully made under a license to make and sell. And, according to Mr. William's letter you refer to, you should not pay any royalty on such spare parts to us, as we are not entitled to it. And likewise would it be with the plug frames or bodies, either assembled or not so, and with other items.

Take the igniter plug frame or casting, the Ingeco, or the Alamo, people can obtain a lot of these that were made by you, and make use of them for mounting the Hercules magneto on them. Of course, under the terms of our contract, such plugs, etc., should be used only in connection with the Webster magneto. But you make these under proper license and sell them as spare parts to either of the above firms, or to I. H. C., and after I. H. Co. have paid you for these they may use them as they see fit or please—to mount the Accurate magneto thereon, for example,—unless you call their

attention to the restrictions as to use in selling to them, if that would help any.

I did not carefully read over your attorney's letter when I was in your office some days ago for the reason that I figured on seeing him as to the matter, and not having been able to have a discussion with him, I cannot make any remarks on his interpretations, etc. However, it seems to me that the Sixth clause of our shop right license agreement makes the matter quite clear as to when the devices, repairs, are royalty free and when not so.

107 page 2—W. E. Co.—April 24/15—Repairs, spare parts, etc.

The repairs proper will, my guess is, add but very little to your business in dollars and cents in the future; at least I do not look for much yearing out of parts, nor breakage either. The spare parts business might amount to considerable.

Heretofore I have not called your attention to the provisions of the Fifth clause of the shop right license for the reason that I considered that any of the extra parts, over and above those shipped in connection with the magnetos, were accounted for in the repairs part of the reports.

Now on that matter of returned magnetos, on those you have paid a royalty of five percent of the selling price. When such magneto is returned outright, you are entitled to deduct the royalty you paid on it. When you take back one of these in exchange for another one, magneto, allowing say two dollars for the old magneto in the exchange, then you are entitled to deduct five per cent of the two dollars, or whatever sum you allow or agree to allow in the exchange. That is, you deduct the royalty on the amount you pay for the old or returned magneto.

Yours truly,

HENRY J. PODLESAK,

Atty. for Podlesak et al.

108

Chicago, July 17, 1915.

Webster Electric Company,
Racine, Wis.

Gentlemen:—

I beg to acknowledge receipt of part of the quarterly report of sales of ignition devices by you during the second quarter of 1915, and also of your check for \$1706.37, this sum to apply on account of the royalty fees for said quarter.

Further beg to acknowledge the receipt of a page of old history, which I will look up as soon as my time permits doing so.

I again beg to call your attention to the fifth clause of the shop right agreement, between yourselves and the Podlesaks, with reference to the quarterly reports; also to my letter to you dated April 24, 1915.

I note that you again, in the royalty report, report the 'returns' the outright returned magnetos, with the 'exchanges of type G', and deduct the total fee on these latter as you do on the 'returns'. My understanding is that in this exchange proposition, you allow about one dollar and fifty cents for each G machine returned in exchange for a J or a K machine; therefore, you are entitled to only the pro rata deduction on this allowance that you make for type G machine, and not to a deduction of the total fee per piece.

Awaiting the complete quarterly report, I am

Yours,

HENRY J. PODLESAK,

Atty. for Podlesak et al.

1636 Miller Ave.,
Chicago, Ill.
HJP/S

109

July 27, 1915.

Mr. Henry J. Podlesak,
1636 Millard Avenue,
Chicago, Illinois.

Dear Sir:—

Your valued favor of July 17th to hand and should have had our earlier attention but for the absnce of the writer from the city.

Replying, beg to advise that in view of the fact that the fourth clause of the Shop Right Agreement to which you refer, gives you at any time the right to make examination of our books and verification of our reports, we did not consider that in your communication of April 24th, and in view of the fact that it has never been your practice with this company to require it, also that the real difference in your getting it would simply mean additional work for our office, that you were really meaning and intending to cause that inconvenience.

However, in order that there may be no question on this score, we are having the report made up with the oath of one

of our officers attached, for while we do not understand you have requested the latter, we anticipate this in order to avoid possible further controversy.

As to the returns on "G" and "F" machines and the manner in which we have made up this report, this is in conformity with our letter of April 8th to which your brother and partner, Emil Podlesak, has already agreed as stated in our letter, and to which you agreed in our office a few days later except that all of us jointly, in considering the matter, agreed that the difference in your favor would be so slight, and would save unnecessary work, that we would effect in each case the "G" and "F" against the "K's" and "J's" exchanged and not charge back anything on cash allowance only. It is true that after you did fully agree to this, that you wrote us again under date of April 24th, in which you wanted to agree to something else apparently more to your advantage, but in our talk which we had with Emil Podlesak later, we understood that the agreement as arrived at verbally and to which we were all a party would be satisfactory in making the settlement.

Now if we understand that it is the desire of both of you to again change this agreement and demand that we should make returns, deducting royalty only on the allowance that we make for "G's" and "F's" when returned outright, or

in case of exchange on the difference between the regular 110 selling price of "K" and "J" in the quantities exchanged

and the price exchanged for, then we will immediately, upon receipt of your advice to the effect that this is the proposition you are ready and willing to agree to and now abide by, revise that part of our quarterly report to conform to your present ideas and enclose a check for whatever difference may be due you, under this new arrangement.

Awaiting your early advice with regard to this, we are

Yours very truly,

THE WEBSTER ELECTRIC CO.

By WALTER BROWN,

Gen. Mgr.

WB: DP

111

Chicago, Aug. 7, 1915.

Webster Electric Company,

Racine, Wis.

Gentlemen:—

Your valued favor of July 27th, by your Mr. Walter Brown,

to hand and would have had earlier attention but for my absence from the city.

Replying, beg to acknowledge receipt of the 2nd quarterly report under the shop right license.

Replying further, beg to say that the only agreements between the Webster Electric Company and the Podlesaks I knew of are: the sole and exclusive license and the shop right license agreements both dated and executed on February 5th, 1914, and a supplemental agreement, to the above, dated and executed on January 20th, 1915. I am not aware of any other agreements such as mentioned in your letter to exist. My brother, and partner in the herein matter, Mr. Emil Podlesak disclaims having made, asserts that he has not made, any agreements, or changes to agreements, or any other arrangements, in respect to the herein matter, other than those above mentioned; and I am sure I made no agreements, etc., other than the above mentioned.

Coming again to your letter of April 8th, 1915, also by your Mr. Brown, mentioned in your favor of the 27th ultimo, will say that about a week or ten days after receiving this letter, —which I did not clearly understand—I happened to be in Racine and called at your office, where Mr. Brown explained to me this letter and the matters referred to therein. It was upon the explanations and understanding derived from this interview that I wrote you on April 24th, 1915, and in this letter I endeavored to explain the matters as they stand. And I think this letter does quite clearly explain the matter under discussion.

Referring now to the fifth paragraph of your letter of July 27th, 1915, will say that we, both Emil and I, are not aware of the fact that we desired any change of or in any agreements between the Webster Electric Company and ourselves. Nor do we desire, intend, or mean to cause the Webster Electric Company unnecessary or any inconvenience; on the other hand, it is and has been our desire to assist in any way possible for us, to co-operate with the Webster Electric Company. All we desire, ask for, is that which is due us under the before mentioned agreements.

We trust you will amend at your earliest convenience those of your reports that have not been formal.

Thanking you in advance, I am

Yours very truly,

HENRY J. PODLESAK,
Attorney for Podlesak et al

112

September 7, 1915.

Mr. Henry J. Podlesak,
Atty. for Podlesak et al.,
Chicago, Illinois.

Dear Sir:

Your valued favor of August 7th came to hand and would have had our earlier attention but that we have not only been extremely busy, but a number of our office force have been taking their yearly vacation within this interval.

In accordance with your request, we have revised our first and second quarterly reports for 1915 covering the difference on replacements to conform with the manner which you have insisted on, and as you will notice by the sheets enclosed herewith, this makes a balance which we overpaid you on the first quarter of \$15.08, and on the second quarter of \$3.78, or a total of \$18.86 as per itemized accounts herewith.

Will you kindly advise us whether you prefer to render a check for this or wish that we should take it off of the next quarterly settlement?

Awaiting your further esteemed favors, we are

Yours very truly,

THE WEBSTER ELECTRIC CO.

By WALTER BROWN,

Gen. Mgr.

WB: DP

Enc. 2.

113

Chicago, Sept. 9, 1915.

The Webster Electric Company,
Racine, Wisconsin.

Gentlemen:

Your valued favor, by your Mr. Walter Brown, of 7th instant, a response to my letter of August 7th, is received and noted. I beg to thank you for the revisions, to the first and second quarterly, 1915, reports, enclosed with your letter.

In noting the second paragraph of your letter it would seem that you misunderstand, for some reason, my request; this request embodies nothing but a reasonable, friendly, accordance in our agreements, the terms thereof.

Returning to the revisions, inasmuch as there appear to be some discrepancies in these revisions to the reports when compared with like details or items of the reports themselves, I feel constrained to request corrections, so that our accounts may become properly adjusted.

As to these discrepancies, please observe that in the first

quarterly report, 1915, you reported a total of 74 devices under the item of "Returns and exchanges", whereas in the revision for the same quarter you report a total of 36 devices replaced or exchanged, and further report a total of "268 'G' & F'F machines returned from I. H. Co. @ 1.50 ea—", making a grand total of 304 devices reported in the revision against a grand total of 74 devices reported in the quarterly report.

Which of the above-mentioned two statements is correct? Were the 268 G & F machines replaced by other types of machines?

Similarly, in the second quarterly 1915 report you reported a total of 179 devices under the item of "Returns and exchanges" And In The Revision For The Same Quarter You Report A Total 57 devices replaced or exchanged, and further a total 134 G & F machines returned 'from' I. H. Co. @ \$1.50 each etc. Which if these is correct?

Please render correct amended statements of the reports, verifying same by oath of the president or vice-president of your company, to Podlesak et al at your very earliest convenience.

The matter of financial adjustment of our accounts, as mentioned in the third paragraph of your letter, will be promptly attended to after the receipt of the proper, formal statement of the accounts.

Thanking you for the past favors, we are

Yours very truly,

PODLESAK & PODLESAK

By HENRY J. PODLESAK

Attorney.

114

September 14, 1915

Podlesak & Podlesak,

Chicago, Illinois.

Attention of Mr. Henry J. Podlesak, Attorney

Gentlemen:

Replying to your esteemed favor of September 9th, beg to advise that in making the revised reports, we only took into consideration under "Returns and Exchanges" those machines which were returned by the Harvester Co., and for which we made replacements under our exchange proposition. The difference between the 74 and 36 devices thus reported in the original report for that quarter and in the amended report covers machines returned by travelers, from

initial equipments, etc., on which royalties had already been paid and which went back into stock when they were returned.

The items of "G" and "F" as returned from the Harvester on which we allowed them \$1.50 each is in accordance with both your letters and verbal statements as to your conception of the contract, but which we were construing to your more favorable advantage than your own construction of it, and this accounts for the difference as due us, for which we have rendered you reports covering both quarters.

If you wish to have the affidavit of an officer of the company attached to same and will kindly forward both of the amended reports which we sent you, the affidavit of an officer of the company will be furnished in accordance with contract, but not necessarily the affidavit of the President or Vice-President as required in your letter under reference.

Thanking you for your early attentions, and awaiting your further valued favors, we are

Yours very truly,

THE WEBSTER ELECTRIC CO.

By WALTER BROWN,

Gen. Mgr.

WB:DP

115

Chicago, Sept. 25, 1915.

The Webster Electric Company,
Racine, Wisconsin.

Gentlemen:

In response to your favor of Sept. 14th, 1915, by your Mr. Brown.

This letter does not, to my regret, clear up the discrepancies existing between the regular reports and the revisions. In fact, to us the matter becomes somewhat more entangled by this letter. We cannot understand why the devices returned by the travelers should not be reported or are not reported in the revisions, when they had been reported in the reports due at regular periods, especially so when the number of devices returned by travelers is greater than the number returned in regular course of business.

Inasmuch as your letter does not clear up the discrepancies in your reports and revisions, and that the revisions would not, even if verified by oath, correct the reports, I am not returning, as you request me to do, these revisions for verification.

We also note reference to the matter of constructions, in the second paragraph of your letter, of the license agree-

ments. Because the spirit of these agreements is so clearly and unmistakably expressed in the letter of these agreements, we are at a loss to understand your said reference.

We are, of course, confined to the terms and covenants, in the agreements, regardless of any constructions which we might prefer to think as more favorable to us, there being no occasion for opinion as to construction, the letter of the contracts being clear and explicit.

It does appear, however, that on the part of your company there may have been some doubt as to the letter of these contracts. The discrepancies that have crept in to the reports would indicate this altho these discrepancies may be due to clerical errors or misunderstanding on part of the bookkeepers, or to both, partly to each.

That your reports were correct I never doubted, I considered them correct, and for that reason, never thought of troubling you by the right provided in the contracts to examine the books. Your letter of April 8, 1915 was the first indication to me that your reports may have been incorrect, irregular; your reports for the second quarter, 1915, gave further indication of this; your revisions to the first and second quarterly reports of 1915, seem to show clearly that there have been and are errors in your reports, and I am therefore compelled to examine the reports.

Looking over your reports and examining the details or items, and beginning with your revisions, rendered Sept. 11 7, 1915, and the first and second quarter, 1915, reports, to which these revisions refer, I find that in the first quarterly report you report, and charge back to me, deduct, at rate of 37-1/2c for 63 J machines, as returns and exchanges, and in the revisions applying to this report you report only 31 J machines on same item—a difference of 32 machines, on which you deducted from the first quarterly payments at 37-1/2c more than you now report in the revision. In this same report you deducted for 11 K machines 20c making a total of \$13.10 excess deduction taken from the royalties due us for that period, and this amount \$13.10 is now due us from the first quarter, 1915, on this item. On the balance of the K and J machines or 5 K machines and 31 J machines, on which you made exchanges, as is shown in your revision, you are entitled to deduct from the per piece royalty fee, 5% of the difference between the regular price, at which you regularly furnish the machines and the price at which you fur-

nish them in the exchange deal; in other words, you are entitled to deduct 5% of the amount which you allow, give, for the machine given back to you in exchange for a new one; you are not entitled to deduct 5% of the difference between the original price of the machine now given you in exchange and the reduced exchange price of a new machine, which appears to be the way you have figured these deductions in the revisions.

To illustrate, if a machine that you sold for say \$10.50 is returned in exchange for another one which you regularly sell for \$7.50 but in the exchange you furnish it at \$6.50, you are not entitled to deduct 5% on the difference between \$10.50 and \$6.50, but only on the difference between \$7.50 and \$6.50, which is the price you allow for the old machine.

Further, I notice an item, at the foot of the revision for first quarter, 1915, report, of "268 'G and F' machines returned from I. H. Co. at 1.50 each (Allowance 5% or 7-1/2c each) 20.10" and this item I do not find in the regular report for this period; furthermore you are deducting us this 'Allowance' of \$20.10; and I am unable to determine why you charge us with this deduction. From the face of the reports and the revision, it would appear that these 268 G and F machines are some old ones that you have bought outright from the I. H. Co. If such be the case, and it seem to be, then you are not entitled to a deduction, such deduction would not be just, nor in accordance with the contracts as you yourself stated in the second paragraph of your letter of April 8, 1915.

To summarize on the first quarter, 1915, report and revision thereto; you have deducted, from the royalty fees on 32 J machines too many at 37-1/2c, and 11 K machines too many at 20c, both these items in the regular report. In the revision, you now elect to deduct on the difference between the original selling price of machines and the exchange selling price of the new exchange machines in 31 of J machines exchanges, and 5 of K machine exchanges, whereas you are entitled to a deduction on difference between the selling price and the exchanging price of the new machines.

Coming now to the report for second quarter, 1915, and to the later revision, thereto, I find that in the regular report 47 J and P machines are reported as returns and exchanges, and only 45 J machines so reported in the revision; that 117 132 K and L machines are reported returned and exchanged in the regular report and only 12 so reported in

the revision—a difference of 120 machines at 20c or \$24.00 excess deduction from the royalty due me in addition to the 75c excess deduction on the J exchanges. These together with the \$13.20 excess deduction in the first quarter before mentioned, makes \$33.95 due us in royalties, from this item, for the first and second periods of 1915.

Further in respect to the period 1915, report and revision, I find, at the foot of the revision part, item of "134 G and F machines returned from I. H. Co. at \$1.50 each (allowance 5%) or 7½c each 10.05", and in your figures you are deducting this amount from the royalty fees. But such deduction is not just, and is unallowable. Attached to the regular report, I find a page of old history, for the years 1912, 1913, and 1914, and I find that you have deducted from our royalty fees a sum of \$488.98 on account of item, repairs, listed in said page of history. I mentioned this page of history in my acknowledgment of receipt of report under date of July 17, 1915, and must here repeat that I will look this up as soon as I possibly can, and I do not at this time grant that this deduction is proper and just; and please refer to my letter of April 24, 1915, the first five paragraphs of this letter, bearing on this matter.

In my endeavor to get some light on this said old history from the records to me now available, viz: the royalty reports for the years 1912, 1913, and 1914, I find that the amount deducted for machines returned averages around \$8.00 per machine during year 1912, and during the first and second periods of 1913. During the third period of 1913, I find, in the quarterly reports that during July, 1913, 102 machines were returned, the amount deducted for these is given as \$160.50, or about \$1.57 apiece; during August, 1913, 3 machines returned, amount deducted \$29.00 or about \$9.66 a piece; during September, 1913, 49 machines returned, amount deducted \$89.00 or about \$1.40 a piece. Certainly there must be an error in your report, as the difference between the deduction of \$9.66 per machine during one month and a deduction of only \$1.40 per same machine during another month is too great. Which deduction is correct? Perhaps the deductions at the rate of \$1.50 average, per piece are the kind you mention in the second paragraph of your letter of April 8, 1915 and if so, these deductions are not proper, not just, and should not be made or rather, should not have been made.

Similarly in the fourth quarter, 1913, report, I find that in November, 59 machines were returned, \$105.45 deducted there-

for, or about \$1.78 apiece; during December 13 machines returned, \$112.00 deducted, or about \$8.61 a piece.

During 1914, in January 3 machines returned, \$25.00 deducted or about \$8.33 a piece; in February 46 machines returned \$83.00 deducted or about \$1.80 apiece; in March 141 machines returned \$251.50 deducted or about \$1.80 a piece; in April 86 machines returned \$152.35 deducted, about \$1.79 apiece; in May 69 machines returned \$162.00 deducted, about \$2.34 apiece; in July 67 machines returned \$136.00 deducted, about \$2.03 apiece; in July 1 machine returned 118 \$7.25 deducted; in August, 45 machines, \$200.50 deducted, about \$4.45 apiece; in September 2 machines returned, \$16.00 deducted \$8.00 apiece; in October 44 machines returned \$85.00 deducted about \$1.94 per piece; in November 232 machines returned \$360.36 deducted about \$1.55 apiece; in December 34 machines returned \$51.00 deducted about \$1.50 apiece. The rates of price per piece on the above mentioned returned machines do not, it would seem, appear to be correct, to me they do, not appear to be correct. Will you please inform me just how these rates were arrived at, and whether they are correct or not correct?

I further find in the third quarterly report for 1914, a net total of 474 K and L machines sold for this quarter, and a net total of 52 K and L magnetos sold and as omitted from the second quarterly report, 1914, but the selling price is not given so that the 5% royalty fee could be ascertained. Similarly in the fourth quarter, 1914, report, a net total of 1677 K and L magnetos are reported sold selling price not given, same way as it is given for the other types of magnetos reported sold. Comparing payments of royalty fees you made for these two periods, it would appear that you figured the royalty fees on these K and L magnetos at about 20c apiece; the net selling price should have been given and the royalties figured at 5% on this selling price. Please revise your abovesaid reports so as to remove the errors pointed out above.

Notice is hereby given you of your default in the matter of keeping correct accounts, making correct reports and returns thereon in respect to the royalties, all as provided for in the agreement of February 5, 1914, particularly in the seventh clause thereof, as hereinbefore pointed out. By the terms of said contract you have 30 days within which to remove these defaults, however I do trust that you will be so kind that you will correct the error by the time the next report is due.

In conclusion, I very much regret that these errors have crept into the accounts; and were it not for the absolute necessity of having our transactions and accounts in proper and regular form and condition, I would not have gone to the extreme pain, and expense of time, in the endeavor to bring our transactions and accounts into proper condition.

Thanking you for all courtesies extended during the past time, and trusting that once the accounts become righted, they stay so, I am

Yours,

HENRY J. PODLESAK
Atty. for Podlesak et al.

119 AMENDMENT TO BILL OF COMPLAINT.

(Filed November 8, 1915)

Now comes the plaintiff, and by leave granted in open court on November 11, 1915, amends its Bill of Complaint as follows:

1. By cancelling the preamble and substituting therefor the following preamble:

"Webster Electric Company, a corporation organized, chartered and existing under and by virtue of the laws of the State of West Virginia, having its principal place of business at Racine, in the County of Racine, and State of Wisconsin, a citizen of the State of West Virginia, brings this its bill of Complaint against Henry Joseph Podlesak (hereinafter sometimes called Henry J. Podlesak), residing at Chicago, Illinois, a citizen of Illinois and a resident of the Eastern Division of the Northern District of Illinois, Tesla Emil Podlesak (hereinafter sometimes called Emil Podlesak or T. Emil Podlesak or Tesla E. Podlesak), residing at Racine, Wisconsin, a citizen of Wisconsin, having a regular and established place of business at Chicago, Illinois, within the Eastern Division of the Northern District of Illinois, within which division and district he has committed acts of infringement of plaintiff's patents hereinafter complained of, Sumter Electrical Company, a corporation organized, chartered and existing under and by virtue of the laws of the State of South Carolina, and Splitdorf Electrical Company, a corporation organized, chartered and existing under and by virtue of the laws of the State of New Jersey, both of which said corporations have regularly established places for doing business

and duly appointed authorized agents or officers located in the City of Chicago, State of Illinois, in this Division and District, within which District and Division both of said corporations have committed acts of infringements of plaintiff's patents hereinafter complained of, and complains and shows:"

2. On page 27 in paragraph XIX, in line 17, by cancelling the words and figures "September 4, 1915", and substituting therefore the words the filing of this Bill of Complaint,"; in line 19 of the same paragraph, by cancelling the words "and of said Podlesaks"; in line 20 of said paragraph by changing the word "their" to its

3. In paragraph XXIII, on page 43, in line 15 on said page, by inserting after the words "Emil Podlesak" and before the words "have aided" the words within the Eastern Division of the Northern District of Illinois and elsewhere."

WEBSTER ELECTRIC COMPANY
By WALTER BROWN
Vice-President.

121 State of Illinois }
County of Cook } ss.

WALTER BROWN, being first duly sworn, says that he is the Vice-President of Webster Electric Company, the plaintiff in the above entitled cause, and that he has read the foregoing amendment to the Bill of Complaint in said cause, and that the matters stated are true of his own knowledge.

WALTER BROWN

Subscribed and sworn to before me this 11th day of November A. D. 1915.

ALBERT G. McCobb
Notary Public.

* * * * *

122 THE JOINT AND SEVERAL ANSWER OF THE DEFENDANTS SPLITDORF ELECTRICAL COMPANY AND THE SUMTER ELECTRICAL COMPANY.

(Filed December 14, 1915.)

These defendants, Splitdorf Electrical Company (sued as Splitdorf Electric Company), a corporation of the State of New Jersey, and Sumter Electrical Company, a corporation

of the State of South Carolina, for their joint, several and respective answers to the Bill of Complaint of the plaintiff herein, as now amended, respectfully, each for itself, say:

1. These defendants admit that the allegations contained in paragraphs numbered I., III. and VI., XXVI. and XXVII.

2. These defendants, answering the allegations of paragraph II. of the Bill as amended herein, deny, upon information and belief, that the said contract of license therein referred to and marked Exhibit "A", attended to the Bill as amended, is in force and effect between the parties thereto, or was in force and effect prior to the execution and delivery by the defendants, T. Emil Podlesak and Henry J. Podlesak, of the assignment designated and known as the

123 "Splittdorf Contract" attached to the Bill as amended and marked Exhibit "F"; but, further answering, say that the allegations of said paragraph II. are immaterial and impertinent as to these defendants, because neither of these defendants is in the said Bill charged with having infringed, at any of the times mentioned in the Bill as amended, any of the patents referred to and covered by the said Exhibit "A".

3. These defendants admit the allegations contained in paragraph IV. of said Bill as amended, excepting, however, the allegation therein contained that the instrument of license, Exhibit "C", granted "all privileges and rights of action as might accrue under" the patents set forth in said paragraph, and deny that such instrument of license granted such rights; but say that such rights so granted were limited to the right "to bring and maintain suits against infringers of the patent rights covered by the said inventions" set forth in said contract of license, Exhibit "C".

4. These defendants admit the allegations contained in paragraph V. of said Bill as amended, excepting, however, the allegations therein contained that the instrument of license, "Exhibit "D", granted the right of action against infringers accruing under said patents referred to in said paragraph, and deny that such contract of license granted such a right; but say that the right so granted was limited to the right "to bring and maintain suits against infringers of the patent rights covering the said inventions" set forth in said Exhibit "D".

5. These defendants allege that they have no knowledge or information, except as advised by the Bill as amended herein, upon which to form a belief as to the truth of the allegations contained in said paragraph VII. of said Bill as amended, ex-

cept that these defendants admit that from time to time the plaintiff adopted and incorporated into its commercial product certain inventions of the said T. Emil Podlesak; and these defendants allege specifically that prior to, or at 124 the time of, the execution and delivery of the assignment from Tesla Emil Podlesak and Henry J. Podlesak to these defendants,—designated in the Bill as amended Exhibit “F”, to wit: September 4, 1915,—they had no knowledge of, or any information whatsoever concerning, any such facts as alleged in said paragraph VII.

6. These defendants allege that they have no knowledge or information, except as advised by the Bill as amended herein, upon which to form a belief as to the truth of the allegations alleged in said paragraph VIII. of said Bill as amended; but allege specifically that prior to, or at the time of the execution and delivery of, the assignment from Tesla Emil Podlesak and Henry J. Podlesak to these defendants,—designated in the Bill as amended as Exhibit “F”, to-wit: September 4, 1915,—they had no knowledge of, or any information whatsoever concerning, any such facts as are alleged in said paragraph VIII.

7. These defendants admit, as alleged in paragraph IX. of the Bill as amended, that application was made by Emil Podlesak for Letters Patent on July 21, 1911, which resulted in the issue of Letters Patent No. 1,098,052, May 26, 1914, to said Emil Podlesak; but these defendants allege that they have no knowledge or information, except as advised by the Bill as amended herein, upon which to form a belief as to the truth of the remaining allegations contained in said paragraph IX. of said Bill as amended; but these defendants deny, upon information and belief, that the expenses of preparing and prosecuting the applications therein referred to in said paragraph IX. were borne by the plaintiff with the understanding and agreement that the plaintiff should, and did, have the exclusive right to make, use and sell said inventions upon the terms and conditions identical with those as set forth in the license agreement of November 2, 1908, Exhibit “A”; and, further, these defendants specifically allege that prior to, or at the time of the execution and delivery of, the assignment from Tesla Emil Podlesak and Henry J. 125 Podlesak to these defendants,—designated in the Bill as amended as Exhibit “F”, to-wit: September 4, 1915,—they had no knowledge of, or any information whatsoever concerning, any such facts as are alleged in said paragraph IX.

8. These defendants admit the allegations contained in

paragraph X. of the Bill as amended—that the defendant Henry J. Podlesak is a brother of Emil Podlesak, and is a registered Patent Attorney; and further admit that to some extent at least the said Henry J. Podlesak has co-operated with his brother Emil Podlesak in connection with some of the transactions between said Emil Podlesak and the said Henry J. Podlesak; but that as to whether he has been familiar with all of the transactions, or with all of the doings of the said Emil Podlesak in conjunction with his relations to the plaintiff, these defendants have no knowledge or information upon which to form a belief.

9. These defendants admit that the said defendant Emil Podlesak has made certain improvements in Inductor Alternators, Current Generators and Igniters for Internal Combustion Engines, and in Ignition Devices for Explosive Engines; but have no information or knowledge as to when those inventions were made by the said Emil Podlesak, as alleged in said Bill as amended, or any information concerning the same. These defendants deny, upon information and belief, that the said inventions were made as a part of the duties of said Emil Podlesak in connection with his employment by the plaintiff, or in the course of his employment by the plaintiff. These defendants have no information or knowledge upon which to form a belief as to the remaining allegations of the Bill as amended contained in said paragraph XI., particularly as to whether the said Emil Podlesak delayed and postponed the making of applications upon the said inventions, and deceitfully, wrongfully and fraudulently made applications for the same. These defendants have no information or knowledge, upon which to form a belief, as to
126 whether the said Emil Podlesak made application through attorneys of his own selection and the selection of his

brother, Henry J. Podlesak, without the knowledge or consent of the plaintiff, or as to whether said applications were surreptitiously and secretly and contrary to the letter and spirit of the then existing terms and conditions of the contract of employment between the plaintiff and the said Emil Podlesak; and, further, these defendants allege specifically that prior to, or at the time of the execution and delivery of, the assignment from Tesla Emil Podlesak and Henry J. Podlesak to these defendants,—designated in the Bill as amended as Exhibit "F", to-wit: September 4, 1915,—they had no knowledge of, or any information whatsoever concerning, any such facts as are alleged in said paragraph XI.

10. These defendants deny upon information and belief that

the inventions described in the Letters Patent recited in paragraph XII. of the Bill as amended were made, conceived of, developed and reduced to practice by the defendant Emil Podlesak as a part of the duty of said Emil Podlesak as an employee of the plaintiff, and deny, upon information and belief, that the same were made for the benefit of the plaintiff, as set forth in said paragraph XII.; and, further, these defendants allege specifically that prior to, or at the time of the execution and delivery of, the assignment from Tesla Emil Podlesak and Henry J. Podlesak to these defendants,—as designated in the Bill as amended as Exhibit “F”, to-wit: September 4, 1915,—they had no knowledge of, or any information whatsoever concerning, any such facts as are alleged in said paragraph XII.

11. These defendants have no information or knowledge, upon which to form a belief, as to the truth of the facts set forth in paragraph XIII. of the Bill as amended; and, further, these defendants allege specifically that prior to, or at the time of the execution and delivery of, the assignment from Tesla

Emil Podlesak and Henry J. Podlesak to these defendants,—designated in the Bill as amended as Exhibit “F”,

to-wit: September 4, 1915,—they had no knowledge of, or information whatsoever concerning, any such facts as are alleged in said paragraph XIII.

12. These defendants admit that on the 5th day of February, 1914, the plaintiff made and entered into two written contracts or agreements between the said Podlesaks, identified as Exhibits “C” and “D” in the Bill as amended herein, and that the said contracts were made and entered into at the same time, and as a part of the same transaction; but deny, upon information and belief, that said contracts were entered into as a result of demands and threats of the said Podlesaks. These defendants further allege that they have no knowledge or information, upon which to form a belief, as to the truth of the remaining allegations in said paragraph XIV contained; and, further, these defendants allege specifically that prior to, or at the time of the execution and delivery of, the assignment from Tesla Emil Podlesak and Henry J. Podlesak to these defendants,—designated in the Bill as amended as Exhibit “F”, to-wit: September 4, 1915,—they had no knowledge of, or any information whatsoever concerning, any such facts as are alleged in said paragraph XIV.

13. These defendants admit that on or about the 20th day of January, 1915, a supplemental agreement was entered into

between the Podlesaks and the plaintiff herein, which is marked as Exhibit "E" of the Bill as amended herein, and submit said contract for the determination of the Court as to its effect upon the preceding contracts of February 5, 1914, marked Exhibits "C" and "D" in said Bill as amended, and say they have no knowledge of the other allegations of said paragraph XV of said Bill as amended.

14. These defendants admit that the said defendant Emil Podlesak duly executed both the application for Letters Patent No. 1,055,076, referred to in paragraph XVI. of the 128 Bill as amended, and the Reissue therefor, but allege that they have no information or knowledge upon which to form a belief as to the truth of the remaining allegations as in this paragraph contained; and these defendants allege specifically that prior to, or at the time of the execution and delivery of, the assignment from Tesla Emil Podlesak and Henry J. Podlesak to these defendants,—designated in the Bill as amended as Exhibit "F", to-wit: September 4, 1915,—they had no knowledge of, or any information whatsoever concerning, any such facts as are alleged in said paragraph XVI.

15. These defendants deny that they have conspired or confederated together, or with either the said defendant Emil Podlesak or the defendant Henry J. Podlesak, to injure or ruin the business of the plaintiff, or to cheat or defraud the plaintiff out of its substantial rights under said contracts of February 5, 1914, Exhibits "C" and "D", or the contract of January 20, 1915, Exhibit "E"; and deny that they have been guilty of any fraud or corrupt conduct in conjunction with the said defendant Emil Podlesak or the said defendant Henry J. Podlesak in obtaining an assignment to them of the rights and interest remaining or vested in the said Podlesaks under and by virtue of said contracts Exhibits "C", "D" and "E" of the Bill as amended. These defendants have no knowledge or information upon which to form a belief as to whether the plaintiff has fully and faithfully kept and performed each and all of the terms and agreements on its part to be kept and performed in connection with said license contracts Exhibits "C", "D" and "E"

16. These defendants, answering the allegations of paragraph XVIII., deny that they, during all the times mentioned, or at any time, have been, or now are, dominated and controlled by the same individuals; deny that they, during the

times mentioned, have been, or now are, co-operating together, except as they jointly acquired certain rights under the contracts mentioned as Exhibits "C", "D" and "E" of the Bill as amended, and as they are now co-operating in 129 the defense of this suit; deny that they keep and maintain in Chicago, Cook County, Illinois, a common office; deny that their business has been, and now is, attended to, and taken care of, by the same individuals; deny that said Splitdorf Electrical Company has acquired, and now has full dominion and control over, said Sumter Electrical Company; but say that the Splitdorf Electrical Company has purchased the physical assets of the Sumter Electrical Company located in South Carolina; and deny that in any of their dealings, or in the dealings of either of them, with said Podlesaks, or either of them, or with each other, or in relation to the rights of the plaintiff, they have acted, or do now act, together in confederation, combination or conspiracy; and deny that they, or either of them, have ever threatened to, or that they intend to continue with one another to do so, or to do so at any time hereafter.

17. These defendants, answering the allegations contained in paragraph XIX., admit that for many years they have been, and are now, engaged in the business of manufacturing, selling and dealing in Electric Generators and Ignition Devices, and that they have been, and now are, active competitors of the plaintiff. These defendants deny that they have knowledge of any rights of the plaintiff in and to Letters Patent No. 1,101,956, and Reissue Patent No. 13,878, except as set forth and contained in the contracts of license of February 5, 1914, (Exhibits "C" and "D"), and the supplemental agreement of January 20, 1915, (Exhibit "E"), prior to the commencement of this suit; and deny that before the commencement of this action, or at any time, they have unlawfully and without right or allowance, made, used or sold, or authorized others to make, use or sell, the inventions set forth and claimed in Letters Patent No. 1,101,956, and Reissue Patent No. 13,878, within the Northern District of Illinois or elsewhere; or that they have been preparing, aiding and encouraging others so to do within the said District and Division, or elsewhere in the United States.

18. These defendants admit that suit was brought in the United States District Court, for the Eastern District of 130 South Carolina, at Charleston, South Carolina, against the defendant Sumter Electrical Company by the plaintiff

herein, with whom were joined Emil Podlesak and Henry J. Podlesak, in which infringement of Reissue Letters Patent No. 13,878 by the said Sumter Electrical Company was charged by the plaintiff, but these defendants allege that said suit was dismissed on or about September 23, 1915, by the plaintiff. These defendants deny that they have any knowledge or information upon which to form a belief as to the truth of the remaining allegations contained in said paragraph XX. of said Bill as amended.

19. These defendants deny that the said Emil Podlesak, or that the said Henry J. Podlesak, did, on or before the 20th day of August, 1915, advise and acquaint either of these answering defendants of the fact that a bill of complaint was in course of preparation, or had been prepared and forwarded to the Clerk of the United States District Court, for the Eastern District of South Carolina, in a suit of this plaintiff and the said Podlesaks against the Sumter Electrical Company for infringement of any patent or patents; and these defendants, further answering, deny, if called upon to traverse an allegation of a conclusion of law, that they did or have unfairly, fraudulently or wrongfully connived or conspired with the said Podlesaks, or either one of them, to violate any of the rights of the plaintiff under said license contracts and supplemental agreement, Exhibits "C", "D" and "E", or under any or all of the said Podlesaks' patents. And these defendants deny that they procured a pretended right to continue and engage in the manufacture, use and sale of Electric Generators and Ignition Devices embodying the inventions and improvements described and claimed in the Podlesak patents with intent to harrass and embarrass the plaintiff in the enforcement of whatever rights it may have under said patents, or with intent to defeat any such rights and the enforcement thereof against any person, corporation or firm violating or invading any such rights, or that they entered into a fraudulent and corrupt arrangement and conspiracy with the said Podlesaks, or either 131 of them, to obtain the assignment to them of any pretended right, title or interest in and to all or any of the said Podlesak patents, or any or all of the rights under said license contracts, and the said supplemental agreements, Exhibits "C", "D" and "E"; but, on the contrary, these defendants allege that they have paid, and have agreed to pay, a fair, adequate and full consideration, to-wit: Sixty-five Thousand Dollars (\$65,000), to the said defendants Podlesaks for the assignment to them of all and whatsoever rights re-

maintaining or vested in the said Podlesaks under and by virtue of said license contracts of February 5, 1914, and the supplemental contract of January 20, 1915, Exhibits "C", "D" and "E", with a knowledge only, at the time of and prior to the negotiations with said Podlesaks and the final execution and delivery to these answering defendants of the "Splitdorf Contract" of September 4, 1915, of the said license contracts, Exhibits "C", "D" and "E", and without any knowledge of any previous relationship existing between the plaintiff and the said Podlesaks, or either one of them, and without knowledge of any facts or circumstances whatsoever, with the exception of said contracts, Exhibits "C", "D" and "E"; and these answering defendants deny that said contracts was a mere pretense, or with the intent and purpose of in any way interfering with, or depriving this plaintiff of, any such rights as it may have, or may have had, under said contracts, Exhibits "C", "D" and "E", and under the said patents therein referred to.

20. These defendants admit that on the 4th day of September, 1915, they entered into the contract of assignment with the said defendants Podlesaks, Exhibit "F" in the Bill as amended, and designated herein as the "Splitdorf Contract", and that the same was duly executed and delivered by the said Podlesaks to these answering defendants; but these defendants deny that the execution and delivery of said contract was a fraudulent arrangement and conspiracy between the Podlesaks and these answering defendants, or any part or parcel thereof, and say that the same was entered into fairly between the parties, for a fair price, and in good faith, and in the firm belief that the said Podlesaks had
132 a right to enter into the said contract with these defendants; and these defendants, further answering, say that they were, or one of them was, informed in writing by the plaintiff, prior to the time they entered into the said contract, whereby they acquired the rights remaining in said Podlesaks, that said Podlesaks were the owners of said patents, and these defendants relied thereon, as well as upon the advice of counsel, in believing that the said Podlesaks were such owners, and paid, and agreed to pay, sums of money aggregating to-wit: Sixty-five Thousand Dollars (\$65,000) upon such belief and reliance, and plaintiff ought not now to be heard to assert that the said Podlesaks were not such owners. These defendants, further answering the allegations contained in said paragraph XXII. submit the said "Splitdorf Contract" for

the interpretation of the Court, and for the determination of the rights of these defendants therein and thereunder.

21. These defendants admit that at the time the said "Splitdorf Contract" was made and entered into, the said Podlesaks, or either one of them, were not engaged in the business of manufacturing, selling or dealing in, magneto ignition apparatus for internal combustion engines (electric generators and ignition devices), but deny that they, or either one of them, did not have any good will in, or right to the use of, the name Podlesak in connection with the sale of apparatus under the patents granted to them and referred to in the license contract, Exhibits "C", "D" and "E". These defendants have no knowledge or information, upon which to form a belief, as to whether the plaintiff has built up a large and extensive business of manufacturing, selling and dealing in such magneto ignition apparatus, nor any knowledge or information, upon which to form a belief, as to whether, at the time that the said "Splitdorf Contract" was made and entered into, the plaintiff had, and now has, a good-will connected with such business. These defendants have no knowledge or information, upon which to form a belief, as to whether

the devices manufactured by the plaintiff have become
133 known on the market by the name Podlesak. These defendants deny that they have ever threatened to sell or place upon the market devices manufactured either by the Sumter Electrical Company of South Carolina or by the Splitdorf Electrical Company of New Jersey, or through or by any other Company, the Electric Generators and Ignition Devices bearing the name "Podlesak" thereon, with the intent and design to deceive purchasers and users into the belief that the apparatus so sold or placed upon the market is the apparatus sold or placed upon the market by the plaintiff; and further allege that their intent and purpose, if the name "Podlesak" is ever used in conjunction with the sale and placing on the market of apparatus of this character, is to so plainly mark or designate such apparatus as of their own manufacture that the public cannot and will not be deceived or misled into the belief that such apparatus was manufactured and sold, or placed upon the market, by the plaintiff. These defendants deny, upon information and belief, that the plaintiff has spent large sums of money in creating a public demand by advertising the Electric Generators and Ignition Devices of its manufacture and sale under the name, and in connection with the name, "Podlesak", in order to bring the said apparatus to the knowledge of the public; and

deny, upon information and belief, that the plaintiff has acquired an extensive and valuable reputation throughout the United States and foreign countries by reason of its efforts and labors, and that it has expended large sums of money in advertising and in advancing the sale of the said Electric Generators and Ignition Devices of its manufacture and sale under the name "Podlesak". These defendants further deny that the said Henry J. Podlesak, or the said Emil Podlesak, within the Eastern Division of the Northern District of Illinois, or elsewhere, have aided, abetted or encouraged these answering defendants, or either of them, in any infringement, or threatened infringement, of the rights of the plaintiff in and to the patents set forth in the Bill as amended, or in the alleged proposed and threatened unfair competition of these defendants; and these defendants further deny that either the said Henry J. Podlesak, or the said Emil
134 Podlesak, or both of them, have agreed, with these answering defendants, or either of them, in the future to aid, abet, encourage or assist these answering defendants in any infringement of, or infraction of, the plaintiff's rights in and to said patents, or in any unfair competition with the plaintiff, as alleged in said paragraph XXIII.

22. These defendants admit that when the said "Splitdorf Contract" was entered into between the said Podlesaks and these defendants, they had knowledge of the license contract and supplemental agreement, Exhibits "C", "D" and "E", between the Podlesaks and the plaintiff, and of any and all such rights as the plaintiff may have thereunder; but these defendants allege that said "Splitdorf Contract" was not a breach of said contracts, Exhibits "C", "D" and "E", nor any violation of the plaintiff's rights thereunder; and further allege that said "Splitdorf Contract" was not fraudulent and corrupt, nor made with a view to cheat or defraud the plaintiff out of any of its just rights under said contracts with the said Podlesaks. These defendants deny that under the contract between the plaintiff and the said Podlesaks, contracts Exhibits "C", "D" and "E", or any of them, the said Podlesaks held any title in and to the patents and applications for patents embodied in said contracts in trust for the plaintiff; and further deny that these answering defendants took such title of the Podlesaks and held, and now hold, the same as Trustees of the plaintiff; and further deny that these defendants are chargeable with the duties and obligations of Trustees to the plaintiff; but these defendants, further answering, say that if there was any trust or fiduciary relation

between them and the said Podlesaks, these defendants had no knowledge of same, if such there was, and ought not now to be held to know the same or bound to respond to any fiduciary relationship and its attendant obligations and burdens toward the plaintiff by reason of anything specifically alleged in the said Bill as amended, or, in fact, existing; and further answering, say that each of these defendants, and said plaintiff, have always been utter strangers to each other, and have had, 135 and have now, no privity of contract with each other, except as these defendants have succeeded by said assignment to the interests of said Podlesaks in said patents and the royalties to be derived and paid therefrom and therefor. These defendants further deny that they have undertaken to, or have betrayed, any trust created by virtue of said contracts between said Podlesaks and the plaintiff, because they deny the existence of any such trust as aforesaid, and also deny that the payment of moneys to the said Podlesaks and the agreement to pay moneys to said Podlesaks is in aid of their commercial piracy to so betray any trust.

23. These defendants admit that they have offered for sale, and are now manufacturing and offering for sale, Magneto Ignition Apparatus involving some of the inventions described and claimed in the patents included in the license contract Exhibit "D", but deny that they have offered for sale, and are now manufacturing and offering for sale any Magneto Ignition Apparatus, or any other apparatus involving any invention described and claimed in any one of the patents included in the contract Exhibit "C" between the plaintiff and the said Podlesaks; and these defendants deny that they intend hereafter to manufacture and offer for sale any invention described and claimed in any one of the patents referred to or embodied in said license contract Exhibit "C"; and these defendants further deny any intention to designate any apparatus made by it by the name "Podlesak" except in conjunction with such a plain designation of their own manufacture as will not deceive or be calculated to deceive the public into the belief that the apparatus is made by the plaintiff. These defendants deny that they knew, or should have known, by reason of anything alleged in the Bill as amended, if such be the case, which defendants likewise deny, that the said Podlesaks had no right, power or authority to give or grant the right to the defendants to manufacture and offer for sale such Magneto Ignition Apparatus as is covered by the patents referred to; but say that the contrary is the fact, as hereinbefore set forth.

136 24. These defendants deny that it is and was the main purpose of these answering defendants to obtain access to the books of account of the plaintiff in order to pry into and get the secrets of the plaintiff's business, and the names and locations of the plaintiff's customers, together with the amount of business done with them, and the prices at which the plaintiff's products were sold, and, therefore, deny any intent to fraudulently, unfairly and unjustly interfere with the trade and business of the plaintiff and injure, and, if possible, ruin such business, as set forth in said paragraph XXVIII.

25. These defendants deny that they will, at any time hereafter, attempt to intervene into any and all litigation which this plaintiff may bring to protect its rights under contracts Exhibits "C", "D" and "E", as against infringers of the patents mentioned in said contracts of license, or to harrass and annoy the plaintiff, or to defeat its rights; and deny that they have planned or made any fraudulent arrangement or conspiracy with said Podlesaks to prevent the plaintiff from instituting or maintaining any suits which it has the right to institute and maintain under and by virtue of said license contract.

26. These defendants have no knowledge or information upon which to form a belief concerning the plaintiff's business, as to whether the same has not been profitable, and is not now profitable, or whether its stockholders have made good from time to time its losses, or whether the plaintiff has ever been able to pay dividends, nor have any information or knowledge as to what salary was paid to the said Emil Podlesak, or whether that was ever larger than that received by any other officer or employee of the plaintiff; and also have no knowledge or information concerning any royalties paid by said plaintiff to the said Podlesaks, or as to when the said Emil Podlesak terminated his employment with the plaintiff. And these defendants are informed by the defendant Emil Podlesak that he has never boasted on any occasion that he would bring about injury and disaster to the
137 plaintiff, and that if any such boasts have been made they were the result of mere momentary irritation, and for which these defendants were, and are, in no way responsible. And these defendants deny that they have ever entered into any arrangement or conspiracy with the said Podlesaks in connection with the alleged plan of said Emil Po-

dlesak to ruin the plaintiff's business, as alleged in said paragraph XXX of said Bill as amended.

26-1/2. These defendants deny all of the allegations contained in paragraphs XXXI. and XXXII. of said Bill as amended, with the exception of the allegation as to the value of plaintiff's rights under the Podlesak patents, which these defendants admit is in excess of the sum of Three Thousand Dollars (\$3,000).

27. In each instance where, in this, their answer, these defendants have denied knowledge of the matters averred in the said Bill as amended, they ask that their said statements that are without knowledge shall operate as their denial, agreeably to the rules of practice in equity.

28. These defendants allege that prior to entering into the said "Splitdorf Contract" with the said Podlesaks, they had knowledge of, and relied upon, a representation, in entering into said contract, which was made by the plaintiff to one H. R. VanDeventer, then, and now, the General Manager of the Sumter Electrical Company of Sumter, South Carolina, which said representation was contained in a certain letter duly signed by the plaintiff company, through and by T. K. Webster as General Manager of the plaintiff, and duly received by the Sumter Electrical Company of South Carolina in the ordinary course of mail delivery, which said letter is hereto attached, made a part of this answer, and marked Exhibit 1.

29. These defendants allege that prior to the entering into of said "Splitdorf Contract", they had knowledge of, and relied upon, certain representations of the plaintiff, in entering into said contract, which are contained and embodied 138 in the bill as amended, filed in the suit of the plaintiff and the Podlesaks jointly against the Sumter Electrical Company of South Carolina, in the United States District Court, for the Eastern District of South Carolina, and which said allegations are as follows:

"that heretofore, by instruments in writing duly signed and delivered, the said Emil Podlesak, one of your orators, sold, signed and transferred unto Henry J. Podlesak, another of your orators, an undivided interest in the invention disclosed in said reissued Letters Patent No. 13,878, and thereafter said Emil Podlesak, and Henry J. Podlesak, by instrument in writing duly executed and delivered, granted unto the said Webster Electric Company, a license to make, use

and sell the invention described in said reissued Letters Patent No. 13,878, and that your orators are now the sole and exclusive owners of said Letters Patent and are entitled to all of the rights and privileges granted and secured or intended to be granted and secured thereby, and are entitled to all the benefits and advantages and moneys that may be recovered for the infringement or violation of said reissued Letters Patent. Proffer is made of said instruments in writing, to be produced in court when necessary."

30. These defendants allege that prior to the entering into of said "Splitdorf Contract", they had knowledge of, and relied upon, certain other acts and representations of the plaintiff in entering into said contract, among which are the allegations contained in a Bill of Complaint filed by the plaintiff in the District Court of the United States, for the Eastern District of Michigan, in a suit wherein the plaintiff and the defendants Podlesaks were plaintiffs and the Alamo Manufacturing Company was defendant, and the fact that the plaintiff treated the said license contract attached to the Bill as amended as Exhibit "C" as an assignment and recorded the same as an assignment in the Patent Office, while it did not so treat the said license contract attached to the Bill as amended as Exhibit "D", but, on the contrary, never recorded the said last mentioned license contract in the Patent Office.

31. And, further answering, these defendants say that the business of these defendants connected with, and incidental to, the manufacture and sale of apparatus similar to that described in the patents referred to in the license contract, Exhibit "D", of said Bill as amended, together with the or-

139 ders now on hand, amounts to the sum of approximately

One hundred and fifty thousand dollars (\$150,000); and these defendants further say that the net worth of the defendant Splitdorf Electrical Company, over and above all its liabilities, is not less than Two Million Dollars (\$2,000,000), and that the net worth of the defendant, Sumter Electrical Company, over and above all its liabilities, is not less than Six hundred thousand dollars (\$600,000), and these defendants, further answering, allege that there exists no such imminent, irreparable injury to the alleged rights of the plaintiff as should warrant the granting of a preliminary injunction restraining the defendants from the continuation of their manufacture, sale and use of the apparatus described in, and covered by, the claims of the patents referred to in the license

contract, Exhibit "D", since, as above set forth, the said defendant corporations are abundantly able to respond and pay any judgment for profits and damages herein, and because the injury to the defendant corporations in preliminarily enjoining their manufacturing, using and selling such apparatus would, as these defendants allege, injure, if not ruin, their business in connection with the manufacture and sale of said apparatus.

32. These defendants, and each of them, ask and move that this suit be dismissed, and all and singular the relief prayed be denied the plaintiff for the following reasons, arising, as matters of law, upon the face of the Bill as amended and insufficiency of the Bill in point of fact to constitute a valid cause of action in equity.

(a) The facts and circumstances alleged in the Bill as amended concerning the relationship between the defendants Podlesaks, or either of them, and the plaintiff, by virtue of employment by the plaintiff-company of Tesla Emil Podlesak, did not, by reason thereof, vest in the plaintiff, any right, title or interest in the patents referred to in the Bill as amended.

(b) The facts and circumstances set forth in the Bill as amended, by virtue of which it is claimed that the plaintiff acquired a right, title or interest in said patents, 140 apart or aside from the contracts referred to in the Bill as amended, and made exhibits thereto, did not vest in the plaintiff any more right or interest, if any right at all, other than a mere non-exclusive license or shop right, and the Bill as amended does not set forth any facts from which it can be found that any greater right or interest became vested in the plaintiff by reason thereof, or now is vested in the plaintiff, than the right or interest vested in the plaintiff in and by virtue of the contracts of February 5, 1914, (Exhibits "C" and "D"), and January 20, 1915, (Exhibit "E").

(c) That the Bill as amended fails to allege any facts or circumstances from which fraud, deceit or wrongful conduct or duress on the part of the defendants, or any one of them, can be inferred; fails to allege any facts which establish, or tend to establish, any wrongful conspiracy to injure the plaintiff's business; fails to allege any facts establishing or creating any trust relationship between the plaintiff and the defendant; and fails to allege any facts from which it may be found and held, as a matter of law, that the defendant Emil

Podlesak agreed to assign his inventions to the plaintiff while in its employ.

(d) That the Bill as amended shows that these defendants have not, and could not have, infringed any of the patents set up therein, or alleged to be infringed thereby.

(e) That the Bill as amended asks relief by way of construction and interpretation of the contract of license Exhibit "D", and that the "Splitdorf Contract" be declared null and void, and such relief cannot be granted because the cause of action attempted to be set forth in the Bill as amended is essentially and primarily for infringement of patents, and the only question presented is as to whether the Podlesaks could give, and these defendants did take, the right to make, use and sell apparatus under the patents referred to in said contract of license Exhibit "D".

141 (f) Because the facts and circumstances alleged in the Bill as amended are not sufficient to establish any trust relations between the plaintiff and any of the defendants, for the reason that all the transactions stated as a foundation for the trust relations claimed, occurred at a time previous to the time of entering into the written agreements between the plaintiff and the Podlesaks mentioned in the Bill as amended, and all such claims were waived by plaintiff when it made and entered into the said agreements in writing, Exhibits "C" and "D".

(g) That no facts are alleged in the Bill as amended constituting unfair competition by these defendants.

(h) That it appears from the Bill as amended that the rights and interests of the plaintiff under the patents alleged to be infringed, were fixed and determined by contracts Exhibits "C", "D" and "E", and that the facts and circumstances alleged in the Bill as amended, outside of said contracts, are not admissible.

(i) That the Bill as amended fails to allege any facts or circumstances from which it appears that the defendants did know, or should have known, that the said Podlesaks had no power to grant, and the said defendants had no right to take, the right to make, use and sell the inventions described in, and covered by, the patents referred to and embodied in the license contract Exhibit "D".

(j) The said Bill as amended is founded on alleged facts and circumstances outside of the face of the contracts referred to, which alleged facts and circumstances are traversed

in this answer, and unless the same are established by proof, no preliminary injunctive relief, can, or should, be granted.

32. And, by way of stating their set-offs or counter-claims, defendants for this purpose adopt all and singular the matters and things hereinbefore set forth, and allege and respectfully pray that their rights in and under the said con-

142 tracts, and each of them, attached to the said Bill of Complaint as amended, as Exhibits "C", "D", "E" and "F", may be by this Honorable Court fully and finally heard, adjudged and decreed on the merits, to the end that there may be an avoidance of multiplicity of suits, and that all doubts or uncertainties in the premises may be put an end to; the plaintiff may be decreed to account to these defendants, as the successors in interest and assignees of said Podlesaks, for the royalties, and all of them, mentioned in said contracts, or any of them, and for such other and general relief in the premises as to equity shall be meet and to this Honorable Court seem just and equitable; and these defendants aforesaid will every pray, etc.

SPLITDORF ELECTRICAL COMPANY

By CHARLES C. BULKLEY,

DAVID B. GANN AND

GEORGE H. PEAKS,

Its Solicitors.

SUMTER ELECTRICAL COMPANY

By F. C. MANNING,

Vice-President.

State of Illinois }
County of Cook } ss.

F. C. MANNING, being first duly sworn, on oath deposes and says: That is is the Vice-President of the Sumter Electrical Company, one of the defendants in the above-entitled cause; that he has read the bill of complaint as amended, filed in the above and foregoing entitled suit, and the above and foregoing joint and several answer of the Splitdorf Electrical Company and the Sumter Electrical Company, two of the defendants, which said answer has been subscribed by him as Vice-President of, and on behalf of, the defendant the Sumter Electrical Company, and that the said answer is true

143 of his own knowledge, except as to such matters as are

therein stated to be alleged on information and belief, and as to such matters so stated to be alleged on information and belief, he believes them to be true.

F. C. MANNING

Subscribed and sworn to before me at Chicago, Illinois, this 14th day of December, A. D. 1915.

CHARLES C. STRICKLAND

*Notary Public in and for the County
of Cook and State of Illinois.*

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(EXHIBIT NO. 1.)

The Webster Electric Company

Racine, Wisconsin.

U. S. A.

January 2nd, 1914.

Mr. H. R. Van Deventer,
Sumter, South Carolina.

Dear Sir:

I beg your indulgence for neglecting so long to answer your letter of December 18th. The pressure of business at the end of the year must be my excuse.

The letter which Mr. Podlesak wrote you under date of the 15th was meant to be purely a personal matter and to inform you regarding some points in this art which perhaps you may not have been acquainted with.

Our attorney, Mr. Lynn A. Williams, has entire charge of our patent business and will write you at once regarding this whole situation.

I appreciate your courtesy in writing me so fully, and appreciate your attitude. Having had an extended experience with patents, I am sure that the manufacturer cannot profitably spend money in patent litigation as there are very few patents that have been issued that are worth it. I shall hope that your clients and ourselves may work together in harmony, as there is no doubt but there is sufficient magneto business in the country to satisfy us both. Mr. Harry Podlesak and brother Emil are the owners of the patents under which

we manufacture, and because of this, Mr. Podlesak wrote his first letter.

Yours very truly,

THE WEBSTER ELECTRIC CO.

(Signed) By T. K. WEBSTER

President.

TKW:DF

* * * * *

14. 145 SEPARATE ANSWER OF DEFENDANT HENRY JOSEPH PODLESAK.

(Filed December 14, 1915)

To the Honorable, the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:—

I.

The defendant Henry Joseph Podlesak, for his separate answer to the bill of complaint as amended, filed by the plaintiff in the above entitled action, admits, denies and alleges as follows:

Said defendants admits that the plaintiff was and is a corporation chartered and existing under and by virtue of the laws of the State of West Virginia, and has its principal place of business at Racine in the County of Racine, State of Wisconsin. This defendant admits that the defendant Henry Joseph Podlesak was at the time of the commencement of this action, and now is, a citizen, resident and inhabitant of the Northern District of Illinois, and has a regular and established place of business therein; and on information and belief defendant admits that the residence and citizenship of the defendants Sumter Electrical Company and Splitdorf Electrical Company are in the States of South Carolina and New Jersey as stated in said bill. Defendant admits and alleges that since the 26th day of May, A. D. 1913, the defendant Tesla Emil Podlesak has been, and now is, a citizen 146 of the State of Wisconsin and a resident and inhabitant of the City of Racine, Racine County, in the Eastern District of Wisconsin.

Defendant denies that he has committed, or contributed to, any acts of infringement of plaintiff's patents or any of them, or of any patents in which said plaintiff has or claims any

interest, within said Northern District of Illinois, Eastern Division, or elsewhere.

As to whether the defendants Sumter Electrical Company and Splitdorf Electrical Company, or either of them, have any regularly established or regular and established places for doing business and duly appointed agents or officers located in the City of Chicago, State of Illinois, in this division and district, or elsewhere in said State, this defendant is without knowledge.

II.

Said defendant alleges and now here moves this Honorable Court that this action be dismissed as to him, and that he be permitted to go hence, for the reason that said bill of complaint as amended does not state facts sufficient to constitute a cause of action in favor of the plaintiff and against this answering defendant, and is insufficient in point of fact to warrant the relief prayed for and to warrant any relief in plaintiff's behalf against this defendant,—in that:

(a) Because the facts and circumstances alleged in the Bill of Complaint concerning the relationship between T. Emil Podlesak in virtue of his employment by the plaintiff company did not, by reason thereof, vest any right, title or interest in the patents referred to in the Bill of Complaint.

(b) Because the facts and circumstances set forth in the Bill of Complaint by virtue of which it is claimed that the plaintiff acquired some right or title apart or outside the contracts made a part of the bill, do not confer upon the plaintiff any more, if any, right or interest than a mere shop right 147 or a license, and the bill of complaint does not set forth any grounds upon which to find that the title became vested in the plaintiff by reason thereof.

(c) That it appears affirmatively on the face of said bill that on August 17, 1912, the defendants Podlesak, by and under the contract Plaintiff's Exhibit B, transferred each to the other the interests in the letters patent and applications for patent in said contract Exhibit B described; and that in and by said contract the defendant Tesla Emil Podlesak did on the consideration therein mentioned assign, transfer and set over unto this defendant Henry Joseph Podlesak a 51/100 interest of, in and to the inventions, patents and applications for patents on the inventions of said Tesla Emil Podlesak described in paragraph or subdivision 1 on pages 3 and 4 of said bill of complaint and which said plaintiff now claims to

own by virtue of the employment of said Tesla Emil Podlesak in plaintiff's service, as more fully set out in subdivisions VIII to XVI of said bill of complaint, to which reference is hereby made; and that said transfer Exhibit B is not in any manner assailed in said complaint, and no rights are claimed by plaintiff in and to said patents and applications for patent in derogation of the rights of this defendant acquired under said Exhibit B.

(d) That it appears affirmatively upon the face of said bill of complaint that the plaintiff has, for a valuable consideration, under the contracts of February 5th, 1914, and January 20, 1915, Exhibits C, D and E of plaintiff's bill of complaint, waived and relinquished any rights the plaintiff might have had, or that plaintiff now claims to have, in the inventions of the defendant Tesla Emil Podlesak and the patents secured by and in the name of said defendant therefor; and that said plaintiff is estopped and precluded and should be held estopped and precluded, from now making any such claim

by and under said contracts, and by and under its allegations set forth in paragraphs or subdivisions IV, V, VI, XIV, XV, XVII, XXVIII, and on page 62 of plaintiff's bill of complaint, wherein it has conclusively elected to abide by each said contracts, Plaintiff's Exhibits C, D and E; and said bill of complaint does not state any facts or circumstances wherefrom it may be inferred and held that the Webster Electric Company was forced to enter into said contracts by reason of any fraud or legal duress.

(e) That said plaintiff having agreed with the defendants Podlesak that the contracts Exhibit C (See Bill, p. 82), Exhibit D (See Bill, p. 90), and Exhibit E (See Bill, p. 94) were and are assignable, and said plaintiff not having at any time prior to the commencement of this action made any claim that said contracts were not assignable, but on the contrary, said plaintiff having stood by and permitted said contracts to be and remain as originally written, and waited until after the Podlesaks had executed and delivered to the defendant corporations the assignment and contract Plaintiff's Exhibit F (See Bill, p. 95), should be held and adjudged guilty of such gross and inexcusable negligence, laches and delay, to the injury of this defendant, as to estop and preclude said plaintiff from now claiming other or different rights than have been granted it by the defendants Podlesak by and under said contracts, Exhibits C, D and E.

(f) That said plaintiff having agreed with this defendant under the contract Plaintiff's Exhibit D that the defendants Podlesak expressly reserved (See Bill, p. 85) the right to themselves to make, use and sell the inventions mentioned in said contract Exhibit D (See Bill, p. 83); and having further agreed (See Bill, p. 90) that said contract shall extend to and be binding upon the heirs, assigns and legal representatives of the parties of the first part therein, the defendants Podlesak,—plaintiff should be held and adjudged estopped and precluded from in any manner questioning the assignment by this defendant of his right, title and interest in said contracts 149 Exhibits C, D and E, and in the patents therein mentioned.

(g) Because the facts and circumstances alleged in the bill are not sufficient to establish any trust relation between the plaintiff and any of the defendants, for the reason that all the transactions stated as a foundation for the trust relations claimed, occurred at a time previous to the time of entering into the written agreements between the plaintiff and the Podlesaks mentioned in the Bill of Complaint, and all such relations, if any there were, became abandoned, and all such claims were waived by plaintiff when it made and entered into the said agreements in writing.

(h) That said Bill of complaint, as amended, does not state facts sufficient to constitute a cause of action in favor of plaintiff against the defendant Henry Joseph Podlesak, and is insufficient in point of fact to warrant the relief prayed for, or any relief in plaintiff's behalf upon any cause or causes of action for infringement of the patents therein charged to have been infringed, or the alleged contribution by this defendant to the infringement of the patents mentioned in said bill of complaint, since under the contract Exhibit D of said bill of complaint the defendants Podlesak had the right to manufacture and sell the devices embodying the inventions the patents on which are charged to have been infringed.

III

Defendant alleges that, if said bill states any cause of action against him, there is a misjoinder of causes of action in the bill of complaint herein, because the complaint alleges several causes of action, but the said several alleged causes of action are not joint, and the same liability is not asserted against all of the material defendants, and sufficient grounds

do not appear for uniting the causes of action in order to promote the convenient administration of justice, in that :

(a) The complaint charges infringement on the part 150 of the corporation defendants, by making, using and selling and importing into the Northern District of Illinois, Eastern Division, apparatus described and claimed in the Podlesak patents charged to be infringed in suit, and asserts liability against said defendants by reason thereof, but states no facts or circumstances showing such acts of infringement on the part of the Podlesaks and asserts no liability against them.

(b) The complaint charges the said Podlesaks, defendants, with certain delays, breaches of contract, deceitful, wrongful, and fraudulent actions, both individually and in co-operation and connivance with each other, in respect to their patents, inventions and applications for patents, prior to any alleged agreement or connection of said corporation defendants, with said Podlesaks, and asserts liability against said Podlesaks therefor, but sets forth no facts or circumstances to connect the said Electrical Companies, defendants, with the said wrongful acts on the part of the Podlesaks, and asserts no liability therefor against said defendant corporations .

(c) The complaint charges unfair competition in trade on the part of the corporation defendants, particularly, in the use of the word Podlesak in connection with the manufacture and sale of apparatus, and asserts liability against the said defendants therefor, but makes no charges supported by allegations of fact against the said Podlesaks, and asserts no liability against them in that regard.

(d) The complaint charges interference with litigation on the part of the corporation defendants, and asserts liability against them therefor, but makes no similar charges supported by allegations of fact against the Podlesaks, in respect of infringers other than the Electrical Companies, defendants, and asserts no liability therefor against the Podlesaks.

(e) The complaint alleges divers other several causes 151 of action and asserts liability thereon against the said

Podlesaks or either of them, and against the said defendant corporations or either of them, but does not allege any joint cause of action, supported by allegations of fact, excepting, that the bill charges conspiracy in that the Podlesaks, defendants, sold, and the Electrical Companies, defendants, purchased for a valuable consideration, the Podlesak patents, subject to the existing contracts mentioned in the bill of com-

plaint; and this defendant is advised by counsel, and so avers, that such charge is not sufficient to support the joinder of all the other dissimilar and separate causes of action without joint liability, which are hereinbefore set forth, and does not constitute sufficient ground for uniting the said several causes of action in order to promote the convenient administration of justice, particularly, because the various acts complained of are not related as parts of one general transaction, nor did the several alleged causes of action arise out of one general transaction, nor is there a common fact or set of facts or circumstances upon which the several unrelated causes of action depend, nor is there alleged in the bill any common ground for relief against the several defendants and in respect of the several causes of action set forth.

IV.

Defendant alleges further that there is a misjoinder of parties in the bill of complaint, herein, there being several defendants, but there not being a joint interest among all of the defendants in the several subjects of the action, in that:

(a) Neither of the defendants, the said Electrical Companies, has any unity of interest or defense with either or both of the said Podlesak Brothers, co-defendants, in respect to any sum or sums of money alleged in the bill to have been paid to the said Podlesaks by the plaintiff prior to the execution of the Splitdorf contract.

152 (b) Neither one nor both of the said Podlesaks have any unity of interest with either or both of the said Electrical Companies, co-defendants, in the unlawful competition alleged in the bill of complaint, as it does not appear in the said bill of complaint that either of the said Podlesaks is engaged in making, using or selling apparatus in infringement of the plaintiff's rights or any ignition apparatus whatsoever.

(c) Neither of the defendants, the said Podlesaks, has any unity of interest with either or both of the Electrical Companies, co-defendants, in any interference with litigation by said Electrical Companies, as alleged in the bill.

(d) Neither of the corporation defendants has any unity of interest with either of the said Podlesaks, co-defendants, in respect to acts alleged in the bill to have been done by one or both of the said Podlesaks, individually, or in connivance with each other, before the date of any connection or agree-

ment alleged in the bill between said Electrical Companies and the said Podlesaks.

And for all and singular the reasons hereinabove set forth, defendant says that the bill of complaint should be dismissed.

V.

1. This defendant, further answering, admits that Letters Patent of the United States Nos. 947,647; 948,483; 1,003,649; 1,056,360; 1,022,642; 1,101,956; 1,098,754; 1,098,052; 1,055,076 and reissue No. 13,878 were duly issued in manner and form as alleged in paragraph 1 of said Bill of Complaint excepting only that defendant alleges that patent No. 1,055,076 was granted March 4th, 1913, instead of March 14th, 1913, as erroneously alleged in said Bill of Complaint.

2. This defendant further answering admits that license agreement Exhibit A, referred to in paragraph 11 of said 153 Bill of Complaint, was entered into between this defendant and Emil Podlesak on the one hand, and Webster Manufacturing Company on the other hand, as per copy of said agreement attached to the Bill of Complaint; and denies the allegations of said Bill of Complaint as to the legal effect of said instrument, or that it contains any matter or purports to be anything different from what appears upon the face thereof.

3. And in this behalf, defendant alleges that said contract, Exhibit A, was by and in accordance with its specified terms of termination, on or about the 30th day of March, A. D. 1912, and thereafter on July 26th, 1912, canceled, terminated and annulled by this defendant and the defendant Emil Podlesak, because of the failure of the plaintiff Webster Electric Company, the assignee of the licensee therein named, to pay the royalties provided in said contract and to otherwise comply with the covenants, terms and conditions thereof on its part; that after said contract was annulled, this defendant and the defendant Emil Podlesak from time to time permitted the plaintiff, at its specific written request, to manufacture and sell certain of the devices in said contract described to fill orders which said Webster Electric Company then had, and not otherwise; and alleges further that after the termination of said contract, said Webster Electric Company had or retained no rights whatsoever thereunder, except the bare right, granted from time to time at plaintiff's specific request to manufacture and sell certain of said inventions, for the sole

purpose of filling orders secured by said plaintiff, at different times; that said termination and cancellation was at or about said last mentioned dates, to wit, March 30th, 1912, and on July 26, 1912, fully agreed to and acquiesced in by the plaintiff; and that because of the premises, said contract, Exhibit A, ceased to be effective for any purpose, and that said plaintiff had no rights thereunder.

154 4. This defendant further answering admits that this defendant entered into an agreement with said Emil Podlesak, referred to in paragraph III of said Bill of Complaint as Exhibit B, as per copy of said agreement attached to said Bill of Complaint, and admits that this defendant and said Emil Podlesak entered into three certain agreements with plaintiff, referred to in paragraphs IV, V and VI of said Bill of Complaint, as Exhibit C, Exhibit D and Exhibit E respectively, as per copies of said agreements attached to said Bill of Complaint, which latter agreement, Exhibit E, was supplemental to and in confirmation of the aforesaid agreements Exhibits C and D; and in connection with said Exhibits B, C, D and E, this defendant denies that they or any of them contain or were intended to contain anything other than as stated on the faces of said agreements, or that the legal effect of said agreements is any different from what said agreements on their faces purport to be, and specifically denies any and all claims of the plaintiff as to the legal effect of said agreements other than the same appears in each of said agreements.

5. This defendant further answering admits that plaintiff was and is authorized to manufacture and sell electric generators and admits that it has been engaged in said business; admits that said Webster Manufacturing Company and the plaintiff were engaged in attempting to develop and put upon the market electrical generators and ignition devices for explosive engines embodying the Milton and McInnerney patents referred to in paragraph VII of said Bill of Complaint, and alleges also that said Webster Manufacturing Company and the plaintiff attempted to develop and put upon the market similar generators and ignition devices under the Mears and Aylward inventions not referred to in the Bill of Complaint, and this defendant is informed and verily believes and so states the fact to be that said Webster Manufacturing Company or said plaintiff did not at any time
155 prior to the date of license agreement Exhibit A develop

a practical product or any business in respect thereof of any lucrative importance, if any at all; alleges that he has no knowledge of the amount of money spent by plaintiff in building up and developing the business of the manufacture and sale of ignition devices for gas engines, but, as this defendant is informed and verily believes, the greater part of the expenditure made by the plaintiff and said Webster Manufacturing Company was expended in the attempted development of the inventions of said Milton, McInnerney, Mears and Aylward, which resulted in a practical failure to produce commercial products; denies that any substantial part thereof was expended in the development of said business in reliance on the rights under the Podlesak patents; admits that the plaintiff now has a lucrative business based upon the manufacture and sale of electric generators and ignition devices embodying the inventions of the Podlesak patents enumerated in Exhibits C and D, but denies that the expending and lucrative business which has come to the plaintiff is due to the efforts of the plaintiff; denies that large or any substantial sums of money have been by said plaintiff invested in advertising and otherwise bringing its products to the favorable attention of prospective buyers and users.

6. In this respect, this defendant further answering states that long prior to his contractual relations with the plaintiff or Webster Manufacturing Company, to-wit, prior to the year 1900, this defendant had been employed by the leading gas engine builders in the United States in developing gas engines and ignition devices therefor; that he had contributed to the literature of the art in technical journals and had presented papers before engineering societies, whereby he enjoyed a wide and favorable reputation in the art of gas engine ignition; alleges that subsequent to the date of Exhibit A 156 and prior to the date of Exhibits C and D, on sundry occasions, this defendant although never in plaintiff's employ, at his own expense, called upon a large number of gas engine manufactures by whom he was then known in the interests of the electrical generator and ignition devices manufactured by the plaintiff under the Podlesak patents, and this defendant asserts that the growth of the business of the plaintiff in the manufacture and sale of its product made under the Podlesak patents has been largely, if not wholly, due to the fact that prospective buyers and users recognized said devices as "Podlesak" devices and purchased them by reason

of the favorable reputation which this defendant enjoyed among builders, dealers and users of gas engines, acquired as aforesaid; and this defendant denies that said plaintiff did by any of its efforts add to or increase the value of the name Podlesak or to the reputation of said Podlesak in the gas engine ignition or any field.

7. This defendant further answering avers that the license agreement, Exhibit A, was entered into at the urgent solicitation of Webster Manufacturing Company, which said agreement related to joint inventions of this defendant and said Emil Podlesak; that said inventions were invented and reduced to practice by the completion of commercial devices long prior to the date of said license agreement, Exhibit A, to-wit, shortly prior to the 25th day of September, 1901, that said inventions covered by said license agreement, Exhibit A, embodied and included the basic principles of the gas engine ignition devices manufactured by said Webster Manufacturing Company and Webster Electric Company, plaintiff herein; that the later inventions of this defendant and said Emil Podlesak, which were produced after the date of Exhibit A, and which were embodied, together with United States Letters Patent No. 1,056,360, in the shop right agreement Exhibit D, were auxiliary to the basic inventions embraced in Exhibit A, though not exclusively adaptable to or operable in connection therewith.

8. This defendant further answering admits that he 157 is a brother of the defendant Emil Podlesak, and is a registered patent solicitor, but in this behalf states that he is not now and never was an attorney at law and has never been licensed or admitted to practice law before any court; admits having and having had knowledge that said Emil Podlesak had become employed by said Hertz Electric Company, some time during August, 1909, upon written agreement; that this said agreement was terminated during March or April, 1910; that thereafter the plaintiff company made a new employment agreement, in writing, with Emil Podlesak, on May 18, 1910; that this last said agreement was terminated in March, 1913, by a new employment agreement, in writing, between said company and said Podlesak; denies that he has been or is now familiar with all transactions and doings of the defendant Emil Podlesak set forth in the Bill of Complaint; and denying any knowledge that said Emil Podlesak has been guilty of any wrongful conduct whatever, denies that

he has aided, assisted and co-operated with said Emil Podlesak in all or any of his transactions and doings with said plaintiff, or in any wrongful act whatsoever.

9. Defendant denies that this defendant has at any time prior to, at or subsequent to the 29th day of December, 1911, in co-operation or connivance with his said brother Emil Podlesak, assisted said Emil Podlesak to deceitfully, wrongfully and fraudulently make applications for United States Letters Patent covering the inventions set forth in paragraph XI of the Bill of Complaint or any inventions; admits that this defendant did assist in the prosecution of some of the applications referred to in paragraph IX of said Bill of Complaint; denies that he prosecuted or directed the prosecution, or intended so to do, of any application or applications, for any such or any Letters Patent of the United States surreptitiously or secretly or contrary to the letter and spirit of any contract of employment between said Emil Podlesak and the

plaintiff herein, in a manner to induce or tending to induce said Emil Podlesak to violate such alleged contract;

denies that plaintiff was without knowledge of such applications or that plaintiff did not discover the facts until long after such applications were made,—but on the contrary this defendant specifically states and affirms that the inventions embraced in each and all of the applications of said Emil Podlesak referred to in said paragraph IX in said Bill of Complaint were offered to plaintiff by this defendant, as attorney in fact for said Podlesaks, for acceptance, some of which offers were made prior to the 30th day of March, 1912, the date of termination of license agreement Exhibit A, and others of which were offered to said plaintiff in a series of attempts by this defendant and Emil Podlesak to enter into an agreement with the plaintiff relative to said Podlesak patents subsequent to the termination of said agreement Exhibit A, and states that some or all of said inventions were embodied in the generating and ignition devices of said plaintiff as a result of said offers, and were made and sold by said plaintiff under the special limited permission granted to it, as heretofore stated, but that said plaintiff failed and refused to enter into a permanent arrangement with this defendant and said Emil Podlesak with respect to said latter application and invention until February 5th, 1914, when shop right agreement Exhibit D was entered into.

10. This defendant further answering denies that plain-

tiff filed and prosecuted, by attorneys of its designation and at its expense, said application Serial No. 639,738, and states the fact to be that this said application Serial No. 639,738 was prepared, and on July 21, 1911, was filed by attorneys designated by said Emil Podlesak and that the expenses of preparing, filing and prosecuting this said application were made at the expense of and paid by the defendants Podlesak; and that such said payments were duly receipted as paid by said Emil Podlesak.

11. This defendant further answering admits that the ignition device set forth in his Letters Patent No. 1,022,642 159 is not an electric generator but is capable of use in connection with and as a part of ignition devices made and sold by the plaintiff; denies that said invention is useful only when incorporated in or used in connection with or as part of electrical generators and ignition devices such as were manufactured, sold and dealt in by the plaintiff as set forth in paragraph XIII of the Bill of Complaint, and alleges that, on the other hand, the device of said last mentioned patent was capable of use in connection with a large number of ignition devices made by a large number of manufacturers throughout the United States and operating on principles entirely different from those manufactured and sold by plaintiff; and alleges that about forty thousand of such devices are now used; denies that he surreptitiously and with the connivance of said Emil Podlesak arranged to incorporate said invention into the electric generators and ignition devices manufactured, sold and dealt in by said plaintiff; denies that said device was so incorporated in the plaintiff's generators and ignition devices without its knowledge; denies that plaintiff was without knowledge of the incorporation of said last named invention in its ignition device at the time of its incorporation thereinto and denies that the plaintiff was without knowledge of this defendant's assertion as inventor until shortly before February 5th, 1914, but on the contrary this defendant states that said invention so set forth in said United States Patent in 1,022,642 was incorporated in the electrical generator and ignition devices of the plaintiff at the suggestion and request of said plaintiff and avers that said invention of Letters Patent No. 1,022,642 was not so adopted by plaintiff until about the month of September, 1912, or more than six months after the grant and publication of said patent.

12. This defendant further answering admits that he, on and after the 9th day of April 1912, and prior to the 5th 160 day of February, 1914, called plaintiff's attention to said patent 1,022,642 and to other inventions set out in paragraph XIII of said Bill of Complaint, but states that when plaintiff was by this defendant notified of such infringement license agreement Exhibit A had long theretofore been terminated by mutual consent of the parties, and by reason of default on the part of plaintiff; and further alleges that when said notice of infringement was served upon plaintiff by defendant, this defendant was not under any contractual relations of any kind whatsoever with the plaintiff under and by which said plaintiff had any right under said inventions or any of them; alleges that during the interim between the date of the termination of said license agreement Exhibit A and February 5th, 1914, plaintiff from time to time requested special permission from this defendant to make and sell devices under the aforesaid Podlesak patents and inventions on orders periodically received for such devices, and that limited and special permissions were granted upon such requests and were to be withheld by defendant whenever he saw fit so to do.

13. Answering further, this defendant states that, as he is informed and verily believes, some or all of the inventions described and claimed in Letters Patent No. 1,055,076 (Reissued as No. 13,878); No. 1,101,956, No. 1,098,754, and No. 1,098,052 may have been made by said Emil Podlesak during the time he was in the employ of the plaintiff under contract of May 18, 1910; and upon information and belief states that the plaintiff had no rights in these inventions other than the right to adopt said inventions pursuant to said contract of May 18, 1910, and did not at any time prior to February 5, 1914, intend or declare its intention to make for use and sale said inventions and paid no royalties thereon; and that the plaintiff only intended to make the current generators embodying inventions described and claimed in said Patents 161 Nos. 947,647; 948,483; and 1,003,649, or any of them, and to sell and supply such said generators to builders of gas engines, expecting and intending said gas engine manufacturers to make and supply any other parts necessary to complete the ignition outfit or unit, regardless of whether such said other parts might or might not infringe any or all of said Podlesak patents, granted or to be granted.

14. This defendant further answering denies that the invention covered by Letters Patent No. 1,022,642, hereinabove referred to, was so combined and so used in plaintiff's product that it could not be segregated without injury to plaintiff's business, and alleges the truth to be that the device of said latter invention could be segregated from plaintiff's product without in any manner impairing the utility thereof; denies that this defendant, either alone or in connivance or conspiracy with said Emil Podlesak, took advantage of this or any situation or of the knowledge of this defendant and said Emil Podlesak in relation the plaintiff's business; denies that he himself, or in connivance or conspiracy with said Emil Podlesak, forced said plaintiff by demands, threats or otherwise to enter into the two license agreements designated herein as Exhibits C and D; but, on the contrary, this defendant avers that said plaintiff, subsequent to the termination of license agreement Exhibit A and prior to the 5th day of February, 1914, the date of license agreements Exhibits C and D, repeatedly acknowledged the termination of said agreement Exhibit A and of the full right, title and interest of this defendant and said Emil Podlesak in and to the inventions and patents and each of them embraced in said license agreement Exhibit A, and in full acknowledgment and admission of said right, and of this defendant's interest in the inventions of said Emil Podlesak acquired under the contract Plaintiff's Exhibit B, said plaintiff did on or about the 5th day of February, for a valuable consideration, enter into the agreements with this defendant and said Emil Podlesak hereinbefore 162 referred to and known herein as Exhibit C and Exhibit D; and that when said agreements, Exhibit C and Exhibit D were entered into this defendant and said Emil Podlesak had good and lawful authority to grant the license rights therein granted and intended to be granted, which said rights and authority were specifically recited in said agreements, which were drawn by plaintiff's attorneys under plaintiff's direction, and admitted by the plaintiff by its acceptance of said agreements.

15. And in this behalf, this defendant alleges that the plaintiff has acquired the right to use the device set forth in United States Letters Patent No. 1,022,642 under agreement Exhibit D; alleges that the plaintiff has never in any manner been hindered in the use of said device under said agreement, and that it is not required to pay any royalty whatsoever

thereon so long as the device is incorporated in the ignition devices made and sold by plaintiff, and not sold as a separate and distinct device thereunder.

16. This defendant, further answering paragraph XV of the Bill of Complaint, admits the parties proceeded to act under agreements Exhibit C and Exhibit D until January 20th, 1915, at which time agreement Exhibit E was entered into; that the result of Exhibit E was intended primarily to operate as a reduction of the royalties on each magneto to be paid by plaintiff to the Podlesaks; that the negotiations which finally resulted in Exhibit E extended over five or six months, and that the final draft of said agreement was prepared by the attorney for the plaintiff, and was duly executed by all of the parties; and as this defendant is informed and verily believes, and so charges the fact to be, was in full and complete ratification of the aforesaid agreements, Exhibit C and Exhibit D; and this defendant denies that there existed prior to the execution of supplemental agreement Exhibit E any oral agreement or understanding relating to a change in royalties or the manner of payment thereof, and alleges that the only change made in agreements Exhibits C and D of 163 any kind or nature whatsoever is that set forth and embodied in the supplemental agreement Exhibit E aforesaid.

17. This defendant further answering admits that the fees, costs and expenses of preparing, filing and prosecuting said application for the reissue of said original Letters Patent No. 1,055,076 were borne by the plaintiff, and states that the plaintiff was obligated to bear this expense by the terms of said agreement Exhibit D, and as a part of the consideration thereof; and that said Emil Podlesak duly executed said application and did so by and under the terms and obligations of said contract Exhibit D; and this defendant states that the plaintiff's attorney received said Reissue Letters Patent No. 13,878, in document, and turned over and delivered the same to the Podlesaks, as to owners of all interest and title to and in said patent and of the patent itself; and further states that the reissuing of said patent No. 1,055,076 neither increased nor diminished the rights, granted the plaintiff under said contract Exhibit D, in any manner or degree whatsoever. This defendant denies that the plaintiff has or ever had any other right and alleges that plaintiff never had, and now has no title and no part of an interest in and to said

patent No. 1,055,076, nor in and to the reissue patent No. 13,878, but admits and points out that plaintiff had and has a shop right to make, use and sell the invention thereof, as provided in said contract Exhibit D.

18. This defendant, further answering, denies that the plaintiff has fully and faithfully kept and performed each and all of the terms of the agreements, Exhibit C, Exhibit D, and Exhibit E, on its part to be kept and performed, as set forth in paragraph XVII of said Bill of Complaint, and avers that said plaintiff has neglected and failed to fully and justly account to this defendant and Emil Podlesak for the number of devices made under and in accordance with said agreement, and has failed to pay to said Podlesaks the royalties 164 on the days when said royalties became due, and particularly has failed and neglected to account for and to pay over to said Podlesaks all the royalties which accrued for the quarterly period ending June 30th, 1915, and the royalties which accrued under said agreements to the defendants Podlesak prior to the assignment thereof, dated September 4th, 1915, Exhibit F of the Bill of Complaint, or for the quarterly period expiring September 30th, 1915, in accordance with the true meaning, intent and spirit thereof; and has sought to force and secure unwarranted deductions from the royalties for the quarter ending June 30th, 1915, and to go back of and surcharge accounts rendered and settled during previous quarterly periods, and has in its administration of said contracts construed them against the defendants Podlesak in a manner unduly harsh and severe for the purpose of endeavoring to enforce the allowance by the defendants, Podlesak, of deductions from the moneys justly due said defendants Podlesak; and has further breached said contracts as previously construed and acted upon by the parties hereto by cutting the making "Podlesak Patents" out of electrotypes and printed matter recently employed by the plaintiff to illustrate the Podlesak device in plaintiff's advertising matter in public journals, and by changing the marking "Podlesak Patents" on the devices themselves, manufactured and sold by said plaintiff, from a prominent and conspicuous place, as previously construed and acted upon by the parties to said contracts to an inconspicuous place where said name cannot be seen or read readily by prospective and intending purchasers thereof.

19. This defendant affirms that he has fully and faithfully

kept and performed all the conditions and covenants of said agreements, Exhibit C and Exhibit D, to be by him kept and performed, and denies that he himself or in concert or connivance with said Emil Podlesak or any other person, or for consideration paid or promised to be paid or otherwise fraudulently or corruptly conspired with the co-defendants Sumter Electrical Company and Splitdorf Electrical Company to cheat or defraud the plaintiff out of its substantial rights or any rights under said license agreements or either of them, or to injure or ruin the business of said plaintiff.

20. This defendant, further answering, denies that he has ever acted, or now acts, in confederation or conspiracy with the defendant corporations or with the defendant Emil Podlesak for any object or purpose whatsoever, in any manner having to do with the plaintiff; and further this defendant states he is without knowledge as to the remaining allegations of paragraph XVIII of said Bill of Complaint.

21. This defendant admits on information that Splitdorf Electrical Company and Sumter Electrical Company are engaged in a business similar to that of plaintiff, that defendant is without knowledge of the alleged infringement of Letters Patent No. 1,101,156 or Reissue Letters Patent No. 13,878, set forth in paragraph XIX of the Bill of Complaint except as contained in said Bill and neither denies or affirms the same.

22. This defendant, further answering, denies that he called plaintiff's attention to the alleged fact that the said defendant corporations or either of them were infringing any of the Podlesak patents; denies that the alleged infringement of Reissue Letters Patent No. 13,878 was brought to the attention of plaintiff by this defendant, and denies that this defendant urged and insisted that said suit be brought against Sumter Electrical Company under said Reissue Patent No. 13,878, as set forth in paragraph XX of said Bill of Complaint; but on the other hand asserts that this defendant joined in said Bill of Complaint against the Sumter Electrical Company at the urgent and initial request of plaintiff herein and with some reluctance to himself, and that his reluctance grew out of his then unformed opinion as to the fact of infringement charged; denies that the attorneys who represented 166 resented the co-plaintiffs in the suit against Sumter Electrical Company were the attorneys of this defendant in fact, and alleges that said attorneys were not employed by

this defendant in said suit, but were employed and paid for solely by plaintiff herein and solely by virtue of its supposed authority in and under said agreement, Exhibit D; and this defendant is informed and verily believes and so states the fact to be, that said suit was instituted by the plaintiff herein against Sumter Electrical Company under said Reissue Patent No. 13,878 for special purposes of the plaintiff, knowledge of which, at the time of bringing said suit was withheld from this defendant, to-wit, as a means to induce or force said Sumter Electrical Company and Splitdorf Electrical Company to enter into certain contractual relations with said plaintiff solely for the financial gain and advantage of the plaintiff.

23. This defendant, further answering, denies that prior to, at or since said Bill of Complaint against Sumter Electrical Company was prepared, this defendant, either acting alone or in connivance with said Emil Podlesak or with any other person whomsoever, approached the Splitdorf Electrical Company and Sumter Electrical Company, or either of them, directly or indirectly, and advised said companies of the pendency of said suit; denies that he connived and conspired with said Sumter Electrical Company and Splitdorf Electrical Company, or either of them, directly or indirectly, unfairly or wrongfully, to violate the rights of the plaintiff herein under said license agreements and supplemental agreement Exhibit C, Exhibit D, and Exhibit E, or either of them, or under the aforesaid Podlesak patents, and denies that he in any manner did any act to unfairly or in any other manner give said Splitdorf Electrical Company and Sumter Electrical Company an unfair advantage of the plaintiff; denies that he entered into a fraudulent or corrupt arrangement with said companies or either of them, directly or indirectly, as and for the purpose set forth in paragraph XXI or for 167 any other purpose whatsoever.

24. This defendant admits the execution and delivery, on September 4, 1915, of the assignment and contract marked Exhibit F, and termed the "Splitdorf Contract" in the Bill of Complaint, between the defendants Podlesak and the defendant corporations, and admits that the copy attached to plaintiff's Bill of Complaint is substantially correct, barring typographical errors, and excepting that on the first page of said copy, Exhibit F, letters patent No. "947,647" is erroneously numbered "949,647", and that near the bottom of the page 96 of said Bill of Complaint, and between the word "ap-

plications" and the words "said agreements" the word "or" is erroneously written "on". Defendant denies that he entered into any fraudulent or corrupt arrangement or conspiracy with the defendant corporation; denies that said contract Exhibit F was or is a pretense, and admits and alleges that under and by said contract Exhibit F this defendant did sell and assign to the defendant corporations all that said contract specified by its terms; admits the receipt by the defendants Podlesak of the first payments, aggregating the sum of \$25,000; and as to the remaining allegations, denies that said contract was executed by the defendants Podlesak pursuant to any fraudulent arrangement or conspiracy, or as part and parcel thereof, and denies that said contract Exhibit F was executed for any ulterior purpose whatsoever, or for any purpose or to accomplish any aim or object or to grant any rights other or different from what said contract Exhibit F contains on its face; and alleges that if, as claimed in the Bill of Complaint, said defendant corporations have made, or are attempting to make, any wrongful or improper use of said contract, it is without the knowledge, consent or approval of this defendant; and as to the remaining allegations of paragraph XXI of said Bill of Complaint, defendant alleges that he is without knowledge.

25. Answering the remainder of paragraph XXII, defendant denies that contract Exhibit F is susceptible of any different construction from what said contract contains on the face thereof, and alleges that the allegations of paragraph XXII are irrelevant and redundant, and that this defendant ought not to be required to answer same.

26. Answering paragraph XXIII, defendant alleges that long prior to the time of the execution of the contract of November 2, 1908, plaintiffs Exhibit A, and prior to the time the defendant Emil Podlesak entered into the employ of the plaintiff, the defendants Podlesak had built up and established a good reputation in the field of the development and manufacture of magneto ignition and other apparatus for firing the gas in the combustion chamber of internal combustion engines; that at the time of the execution of the "Splitdorf Contract" Exhibit F, the defendants Podlesak had about completed preparations to enter the magneto business, had perfected workable magneto ignition apparatus, all to be manufactured under and by virtue of the rights remaining in them under Exhibit D, and were preparing to make deliveries commencing November 1, 1915. Defendant denies that the Podlesaks had

no good will be connected with that old or business, and denies that the only good will this answering defendant has was in connection with the plaintiff's business, denies that it was or is the purpose or intent of the Splitdorf contract to convey or to attempt to convey to the defendant corporation any part of the good will of plaintiff's business, or its right to use and apply the name Podlesak to the product of plaintiff manufactured or sold under the Podlesak patents, and alleges in this behalf that plaintiff has never advertised said device to the trade as the "Podlesak" magneto, but on the contrary, has always advertised it as the "Milton", "Milton Improved," "Webster Milton", "Webster Tri-Polar Oscillator" or the "Webster Magneto"; that since the month of

May, 1915, the plaintiff advertised to the trade that the 169 defendant Emil Podlesak was no longer connected with plaintiff, has cut the mark "Podlesak Patents" off its cuts and electro-types where said mark had previously been prominently displayed, and has caused the mark "Podlesak Patents" to be removed from the top part of the magnetos, where it had theretofore at all times been prominently displayed and could be readily seen, to an obscure place on the side, where it would not be noticed by a prospective purchaser unless searched for specially. Defendant denies that the use of the name "Podlesak" by said defendant corporations upon any product said defendant corporations are authorized lawfully to manufacture or sell under or or by virtue of the Splitdorf contract, was or is calculated to mislead or deceive, or would mislead or deceive intending purchasers into believing that the product of said defendant corporations is the product of said plaintiff, or that said "Splitdorf contract" can or is calculated to furnish said defendant corporations any ground or pretense to claim that said defendants have acquired any portion of the good will of the plaintiff in the name "Podlesak" or of the plaintiff's business; and denies that the effect of said Splitdorf contract is or is intended to be to enable said defendant corporations to appropriate any part of plaintiff's good will or of the public demand for plaintiff's said product.

27. And, in this behalf, defendant alleges, that the only right acquired by the plaintiff in or to the name "Podlesak" was and is to annex the surname of the inventors to the magnetos themselves in connection with the word "Patented", as provided in the contracts plaintiff's Exhibits C and D, pages 79 and 86 of plaintiff's bill of complaint, to which ref-

erence is hereby made. That neither he nor his brother Emil Podlesak have in any manner granted to plaintiff an exclusive right to the use of the name "Podlesak" in connection with plaintiff's business, or the field covered thereby, or any rights other or different from the right to affix said name to the devices specified in Exhibits C and D embodying the Podlesak inventions therein specified.

28. That, as this defendant is informed and verily believes, and claims and charges the fact to be, he never parted with his right to use the name "Podlesak" in connection with the manufacture and sale of the devices specified in the contracts Exhibits C and D, or in any business in which this defendant might thereafter engage in competition with the devices manufactured and sold by plaintiff under the contract Plaintiff's Exhibit C; and that he could lawfully sell the right to the use of his name in connection with his right to manufacture and sell under the contract Plaintiff's Exhibit D, or under any other inventions he has made not embodied in the contracts C, D and E, or might make and perfect.

29. Defendant denies that the reputation which plaintiff's product has acquired was built up by the plaintiff, and alleges the fact to be that the reputation of the Podlesak inventions was established by the defendants Podlesak long prior to the time they entered into business relations with plaintiff as aforesaid; and denies that plaintiff has expended any large sums of money in building up its business, and alleges that the large sums expended by plaintiff were in an attempt to perfect other magnetos and internal combustion devices than those covered by the Podlesak patents.

30. Defendant denies that he has aided, abetted or encouraged the defendant corporations directly or indirectly in any infringement or threatened infringement of the Podlesak patents or of plaintiff's rights thereunder, or in the alleged purpose of said defendant corporations unfairly to compete with plaintiff, and denies that he has in any manner threatened or, in the future, or otherwise, to aid, abet, encourage or assist said defendant corporations in any infringement of plaintiff's rights or in any unfair competition with plaintiff.

31. Defendant denies that the "Splitdorf" contract, Exhibit F, was or is a breach of any contract between defendant and plaintiff, or in violation of any rights of said plaintiff; denies that defendant is in any respect a trustee

for plaintiff; denies that said defendant corporations became successors in or under any trust whatever; and denying the creation or existence of the trust alleged, denies that this defendant has betrayed or proven unfaithful to any alleged trust, or that this defendant has betrayed any trust; and alleges that defendant has no knowledge of the remaining allegations of paragraph XXIV of said Bill of Complaint.

32. Defendant alleges that he is without knowledge of the allegations of fact contained in paragraphs XXV and XXVI; admits that Lynn A. Williams and Williams and Bradbury have handled plaintiff's patent business and litigation and were plaintiff's solicitors and counsel named in the Bill of Complaint signed by defendant in plaintiff's suit against the Sumter Electrical Company; and as to the remaining allegations of paragraph XXVII of said Bill of Complaint, this defendant is without knowledge.

33. Answering that portion of paragraph XXVIII which pertains to this defendant, defendant alleges that the contracts Exhibits C, D and E are plain in their terms in so far as plaintiff's duty to account for and pay the royalties therein prescribed is concerned, and in that behalf submits said contracts to the court. Defendant admits that the periods when accounts shall be rendered by the plaintiff are correctly stated in the Bill of Complaint; that there is an account now due for the quarterly period ending September 30, 1915, in which this defendant has an interest for that portion of said period expiring September 4, 1915. Defendant denies that it was or is a part of any fraudulent arrangement or conspiracy between the defendants Podlesak and the defendant corporations that the defendant companies shall examine plaintiff's books, directly or indirectly through the

172 Podlesaks or an agent or attorney designated by them; denies the existence of any arrangement, combination or conspiracy whatsoever; denies any intention or desire to make use of any information which may be contained in the royalty report in which the defendant is interested or to disclose any such information to any of the defendant corporations; denies that the plaintiff will be obliged to make default under said contracts; in this behalf, defendant states that he holds powers of attorney from each of the co-defendants, Splitdorf Electrical Company, Sumter Electrical Company and Emil Podlesak, duly executed and delivered by said co-defendants, under and by virtue of which this defendant

is authorized and empowered to receive from the plaintiff the royalties due to said defendants under agreements Exhibit C, Exhibit D and Exhibit E for the quarter ending September 30, 1915, and is also empowered to give to the plaintiff suitable and sufficient receipt therefor, which said powers of attorney defendant is ready and willing to exhibit to plaintiff upon its request; and as to the remaining allegations of said paragraph XXVIII this defendant alleges that he is without knowledge.

34. Answering paragraph XXIX, defendant denies that he has planned or has any intention, either alone or in connection with the defendant corporations, to defeat any litigation which may be instituted by plaintiff to protect its rights under the Podlesak patents; denies that he has any intention of preventing or attempting to prevent plaintiff from instituting or maintaining such litigation, admits that under the license contracts, Exhibits C & D plaintiff has the right to use the names of said Podlesaks, if so desired, in such litigation, so long as plaintiff is not in default under said contracts; and as to the remaining allegations of said paragraph XXIX, defendant alleges that he is without knowledge.

173 35. Answering paragraph XXX, defendant admits that plaintiff's business has not heretofore been profitable and has sustained considerable losses which have been made good from time to time to a large extent by plaintiff's stockholders; but denies that any such losses have been incurred in the development of plaintiff's business under said Podlesak patents. Admits that plaintiff's business has been more profitable during the present year; admits that a sum, not exceeding \$23,000, has heretofore been paid to the defendants Podlesak by way and on account of royalties under said license agreements; but denies that he has entered into any arrangement whatsoever with Emil Podlesak or with the defendant corporations to carry out any plans to ruin plaintiff's business; and denies specifically that he ever had any such idea in mind.

Further answering, defendant says that he is without knowledge as to the remaining allegations of paragraph XXX of said Bill of Complaint not hereinbefore specifically answered.

36. Further answering, defendant denies that he is prepared or ready to continue any alleged infringement of un-

fair competition against the plaintiff, the existence of which has heretofore been denied by this defendant, and which denial is here again repeated; and denies that said plaintiff will suffer any injury whatever at the hands of this defendant; and as to the remaining allegations of said paragraph XXXI, this defendant says he is without knowledge.

37. Defendant denies that in so far as this defendant is concerned, the plaintiff's remedy is only in equity, but, on the contrary alleges, that if said plaintiff has any cause of action against this defendant, its remedy is at law, and that no cause of action against this defendant, either at law or in equity, has been stated or alleged in said Bill of Complaint.

38. Answering paragraph XXXIV, this defendant denies that said plaintiff is entitled to the relief demanded against this defendant, or to any relief whatsoever, either at law 174 or in equity, against this defendant.

39. Further answering, this defendant denies each and all of the numerous conclusions of law set out in said Bill of Complaint which have not been specifically controverted herein.

40. And answering generally said Bill of Complaint, this defendant alleges that the contract Exhibit F, termed the "Splitdorf contract," was made between the defendant Podlesaks on the one hand and the defendant corporations on the other, in entire good faith and subject to the rights of the plaintiff under the license contracts, Exhibits C, D and E, set out in said Bill of Complaint; that in the making of said contract, this defendant sold out his rights under said patents to said defendant corporations, as he deemed and now deems he had and has a perfect right to do; that this defendant has not in any manner colluded, combined or conspired with the defendants, or any of them, or with any other person, firm or corporation whatsoever, to in any manner prejudice or injure the rights of the plaintiff, either under said Podlesak patents or under the license agreements between the Podlesaks and said plaintiff applicable thereto or otherwise; and in this connection, said defendant alleges that in all matters he has faithfully kept and performed all and singular the agreements between him and the plaintiff, existing and growing out of the relationship which existed between the parties, and has not in any manner used or attempted to use any knowledge which this defendant may have acquired of or concerning plaintiff's business.

41. As to the doings and things charged in said Bill of

Complaint against said Emil Podlesak, Splittorf Electrical Company and Sumter Electrical Company, either individually or among themselves, this defendant is without knowledge.

42. And this defendant, having answered to the said Bill of Complaint in so far as he is advised the same is material or necessary to be answered unto, denies that the plaintiff is entitled to the relief or any part thereof in the Bill of Complaint prayed for, or to any relief whatsoever, and prays the same advantage of his aforesaid answer as if he had set up by motion the several matters and things aforesaid where a motion would have been proper, all of which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court may direct and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HENRY J. PODLESAK

In His Own Proper Person.

Of Counsel

State of Illinois }
County of Cook } ss.

HENRY JOSEPH PODLESAK, being first duly sworn, on oath deposes and says that he is the defendant of that name mentioned in the Bill of Complaint and in his answer in the foregoing entitled action; that he has read the above and foregoing answer signed and subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, excepting the matters therein stated of his information and belief, and as to those matters he believes it to be true.

HENRY J. PODLESAK

Subscribed and sworn to before me this day of December, A. D. 1915.

ELLEN H. CLEGG

Notary Public, Cook County, Illinois

SEPARATE ANSWER OF DEFENDANT TESLA EMIL F
PODLESAK.

(Filed December 14, 1915)

To the Honorable, the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:—

I.

The defendant Tesla Emil Podlesak, appearing specially and for the sole purpose of objecting to the jurisdiction of the court over his person in this action, for his separate answer to that portion of the bill of complaint as amended, filed by the plaintiff in the above entitled action, relating to the citizenship of the parties to this action, admits, denies and alleges as follows:

Said defendant admits that the plaintiff was and is a corporation chartered and existing under and by virtue of the laws of the State of West Virginia, and has its principal place of business at Racine in the County of Racine, State of Wisconsin; and in this behalf defendant alleges that, as he is informed and verily believes, said plaintiff was chartered under the laws of West Virginia as a non-resident corporation; that as this defendant is informed and verily believes, said plaintiff had not at the time this action was instituted, and has not now, any office or place of business in the State of West Virginia, and has never maintained any office or place of business in said state; that none of plaintiff's officers or directors ever resided or now reside in said 177 state; and that said plaintiff's true and only legal residence and habitation is in the City and County of Racine in the State of Wisconsin, under the laws of which state it has, as this defendant is informed and verily believes, qualified to engage in business, and not in the State of West Virginia. This defendant admits that the defendant Henry Joseph Podlesak was at the time of the commencement of this action, and now is, a citizen, resident and inhabitant of the Northern District of Illinois, and on information and belief defendant admits that the residence and citizenship of the defendants Sumter Electrical Company and Splitdorf Electrical Company are in the States of South Carolina and New Jersey as stated in said bill.

Defendant admits and alleges that since the 26th day of

May, A. D. 1913, this defendant has been, and was at the time of the commencement of this action, and now is, a citizen of the State of Wisconsin and a resident and inhabitant of the City of Racine, Racine County, in the Eastern District of Wisconsin; and that this answering defendant never has been, and is not now, a citizen, resident or inhabitant of the State of Illinois or of the Northern District of said State.

Defendant denies that at any time prior to, at, or subsequent to the commencement of this action, he had any regular and established place of business at Chicago, Illinois, or within the Northern District of Illinois, or within the Eastern Division of said District, or anywhere within said State of Illinois, or any agent or agents conducting any regular and established business in said State or District; and, in this behalf, defendant alleges that at all times subsequent to May 26th, 1913, this defendant's sole and only place of business has been, and was at the time of the commencement of this action, and now is, at 1322 Thurston Avenue in the City of Racine, Racine County, Wisconsin; and denies that he has

committed, or contributed to, any acts of infringement of
178 plaintiff's patents or any of them, or of any patents in which said plaintiff has or claims any interest, within said division or district, or elsewhere.

As to whether the defendants Sumter Electrical Company and Splitdorf Electrical Company, or either of them, have any regularly established places for doing business and duly appointed agents or officers located in the City of Chicago, State of Illinois, in this division and district, or elsewhere in said State, this defendant is without knowledge.

Defendant further alleges that on the 12th day of October, A. D. 1915, defendant was casually at the City of Chicago for the business hours of that day only, on business not in any manner connected with the subject matter of this action or with any of the parties thereto; and that while at said city and while he was preparing to return to his home at the City of Racine in said State of Wisconsin he was served with the subpoena in this action, and has not in any manner consented to the jurisdiction of the court over his person, and does now claim and contend that this Honorable Court has never acquired, and is now without jurisdiction over the person of this defendant, and that this action should be dismissed as to him for want of jurisdiction over the person of this defendant; and moves the court, that because of the

matter hereinbefore alleged and set forth, said action be dismissed as to him, and that he be permitted to go hence without delay.

That, if said bill of complaint, or all or any parts thereof relating to matters other than the alleged infringement of the Podlesak patents therein charged, be dismissed as to the defendant corporations, this defendant alleges that said action or the part thereof so dismissed ought not to proceed against this defendant, for the reason and because each said defendant corporations are indispensable parties, without whose presence the rights of all persons interested under the Contracts, Exhibits C, D and E of the bill of complaint, could not be finally determined by the court; and this defendant moves that he be dismissed for that reason, to the extent the bill against the defendant corporations is or may be dismissed.

II.

And without waiving the claim of this defendant that this Honorable Court is without jurisdiction over the person of this defendant, and in event that the Court shall have denied defendant's motion to dismiss said action as to him upon that ground, the defendant Tesla Emil Podlesak, saving and reserving his exception to such denial, alleges, and now here moves this Honorable Court that this action be dismissed as to him and that he be permitted to go hence without delay, for the reason that said bill, as amended, does not state facts sufficient to constitute a cause of action in favor of the plaintiff against this answering defendant, and is insufficient in point of fact to warrant the relief prayed for and to warrant any relief in plaintiff's behalf against this defendant, in that:—

(a) Because the facts and circumstances alleged in the Bill of Complaint concerning the relationship between T. Emil Podlesak in virtue of his employment by the plaintiff company did not, by reason thereof, vest any right, title or interest in the patents referred to in the Bill of Complaint.

(b) Because the facts and circumstances set forth in the Bill of Complaint by virtue of which it is claimed that the plaintiff acquired some right or title apart or outside the contracts made a part of the bill, do not confer upon the plaintiff any more, if any right or interest than a mere shop right or a license, and the bill of complaint does not set

180 forth any grounds upon which to find that the title became vested in the plaintiff by reason thereof.

(c) That it appears affirmatively upon the face of said bill of complaint that the plaintiff has, for a valuable consideration, under the contracts of February 5th, 1914, and January 20, 1915, Exhibits C, D and E of plaintiff's bill of complaint, waived and relinquished any rights the plaintiff might have had, or that plaintiff now claims to have, in the inventions of the defendant Tesla Emil Podlesak and the patents secured by and in the name of this defendant therefor, and that said plaintiff is estopped and precluded and should be held estopped and precluded, from now making any such claim by and under said contracts, and by and under its allegations set forth in paragraphs of subdivisions IV, V, VI, XIV, XV, XVII, XXVIII, and on page 62 of plaintiff's bill of complaint, wherein it has conclusively elected to abide by each said contracts, Plaintiff's Exhibits C, D and E; and said bill of complaint does not state any facts or circumstances wherefrom it may be inferred and held that the Webster Electric Company was forced to enter into said contracts by reason of any fraud or legal duress.

(d) That said plaintiff having agreed with defendants Podlesak that the contracts Exhibit C (See Bill, p. 82), Exhibit D (See Bill, p. 90), and Exhibit E (See Bill, p. 94), were and are assignable, and said plaintiff not having at any time prior to the commencement of this action made any claim that said contracts were not assignable, but on the contrary, said plaintiff having stood by and permitted said contracts to be and remain as originally written, and waited until after the Podlesaks had executed and delivered to the defendant corporations the assignment and contract Plaintiff's Exhibit F (See Bill, p. 95), should be held and adjudged guilty of such gross and inexcusable negligence, laches and delay, to the injury of this defendant, as to estop and preclude said plaintiff from now claiming other or different rights than have been granted it by the defendants Podlesak by and under said contracts, Exhibits, C, D and E.

(e) That said plaintiff having agreed with this defendant under the contract Plaintiff's Exhibit D that the defendants Podlesak expressly reserved (See Bill, p. 85) the right to themselves to make, use and see the inventions mentioned in said contract Exhibit D (See Bill, p. 83); and having further agreed (See Bill, p. 90) that said contract shall extend to and

be binding upon the heirs, assigns and legal representatives of the parties of the first part therein, the defendants Podlesak,—plaintiff should be held and adjudged estopped and precluded from in any manner questioning the assignment by this defendant of his right, title and interest in said contracts Exhibits C, D and E, and in the patents therein mentioned.

(f) Because the facts and circumstances alleged in the bill are not sufficient to establish any trust relation between the plaintiff and any of the defendants, for the reason that all the transactions stated as a foundation for the trust relations claimed, occurred at a time previous to the time of entering into the written agreements between the plaintiff and the Podlesaks mentioned in the Bill of Complaint, and all such relations, if any there were, became abandoned, and all such claims were waived by plaintiff when it made and entered into the said agreements in writing.

(g) That said bill of complaint, as amended, does not state facts sufficient to constitute a cause of action in favor of plaintiff against the defendant Tesla Emil Podlesak, and is insufficient in point of fact to warrant the relief prayed for, or any relief in plaintiff's behalf upon any causes of action for infringement of the patents therein charged to have been infringed, or the alleged contribution by this defendant to the infringement of the patents mentioned in said bill of complaint, since under the contract Exhibit D of said bill of complaint the defendants Podlesak had the right to manufacture and sell the devices embodying the inventions the patents on which are charged to have been infringed.

III.

Defendant alleges that if said bill states any cause of action against him, there is a misjoinder of causes of action in the bill of complaint herein, because the complaint alleges several causes of action, but the said several alleged causes of action are not joint, and the same liability is not asserted against all of the material defendants, and sufficient grounds do not appear for uniting the causes of action in order to promote the convenient administration of justice, in that:

(a) The complaint charges infringement on the part of the corporation defendants, by making, using and selling and importing into the Northern District of Illinois, Eastern Division, apparatus described and claimed in the Podlesak patents charged to be infringed in suit, and asserts liability against

said defendants by reason thereof, but states no facts or circumstances showing such acts of infringement on the part of the Podlesaks and asserts no liability against them.

(b) The complaint charges the said Podlesaks, defendants, with certain delays, breaches of contract, deceitful, wrongful and fraudulent actions, both individually and in co-operation and connivance with each other, in respect to their patents, inventions and applications for patents, prior to any alleged agreement or connection of said corporation defendants, with said Podlesaks, and asserts liability against said Podlesaks therefor, but sets forth no facts or circumstances to connect the said Electrical Companies, defendants, with the said wrongful acts on the part of the Podlesaks, and 183 asserts no liability therefor against said defendant corporations.

(c) The complaint charges unfair competition in trade on the part of the corporation defendants, particularly, in the use of the word Podlesak in connection with the manufacture and sale of apparatus, and asserts liability against the said defendants therefor, but makes no charges supported by allegations of fact against the said Podlesaks, and asserts no liability against them in that regard.

(d) The complaint charges interference with litigation on the part of the corporation defendants, and asserts liability against them therefor, but makes no similar charges supported by allegations of fact against the Podlesaks, in respect of infringers other than the Electrical Companies, defendants, and asserts no liability therefor against the Podlesaks.

(e) The complaint alleges divers other several causes of action and asserts liability thereon against the said Podlesaks or either of them, and against the said defendant corporations or either of them, but does not allege any joint cause of action, supported by allegations of fact, excepting, that the bill charges conspiracy in that the Podlesaks, defendants, sold, and the Electrical Companies, defendants, purchased, for a valuable consideration, the Podlesak patents, subject to the existing contracts mentioned in the bill of complaint; and this defendant is advised by counsel, and so avers, that such charge is not sufficient to support the joinder of all the other dissimilar and separate causes of action without joint liability, which are hereinbefore set forth, and does not constitute sufficient ground for uniting the said several causes of action in order to promote the convenient administration of justice,

particularly, because the various acts complained of are not related as parts of one general transaction, nor did the 184 several alleged causes of action arise out of one general transaction, nor is there a common fact or set of facts or circumstances upon which the several unrelated causes of action depend, nor is there alleged in the bill any common ground for relief against the several defendants and in respect of the several causes of action set forth.

IV.

Defendant alleges further that there is a misjoinder of parties in the bill of complaint, herein, there being several defendants, but there not being a joint interest among all of the defendants in the several subjects of the action, in that:

(a) Neither of the defendants, the said Electrical Companies, has any unity of interest or defense with either or both of the said Podlesak Brothers, co-defendants, in respect to any sum or sums of money alleged in the bill to have been paid to the said Podlesaks by the plaintiff prior to the execution of the Splitdorf contract.

(b) Neither one nor both of the said Podlesaks have any unity of interest with either or both of the said Electrical Companies, co-defendants, in the unlawful competition alleged in the bill of complaint, as it does not appear in the said bill of complaint that either of the said Podlesaks is engaged in making, using or selling apparatus in infringement of the plaintiff's rights or any ignition apparatus whatsoever.

(c) Neither of the defendants, the said Podlesaks, has any unity of interest with either or both of the Electrical Companies, co-defendants, in any interference with litigation by said Electrical Companies, as alleged in the bill.

(d) Neither of the corporation defendants has any unity of interest with either of the said Podlesaks, co-defendants, in respect to acts alleged in the bill to have been 185 done by one or both of the said Podlesaks, individually, or in connivance with each other, before the date of any connection or agreement alleged in the bill between said Electrical Companies and the said Podlesaks.

And for all and singular the reasons hereinabove set forth, defendant says that the bill of complaint should be dismissed.

V.

And without in any manner waiving the contention that this Honorable Court is without jurisdiction over the person of the defendant Tesla Emil Podlesak, and saving and reserving his exception to any order denying this defendant's motion to dismiss said action as to him on the grounds aforesaid and each of them, said defendant, answering that part of said bill of complaint which pertains to him, admits, denies and alleges as follows:

1. This defendant admits the allegations of subdivision I of said bill of complaint, excepting only that allegation as to the date of patent for current generator and igniter for internal combustion engines No. 1,055,076, which patent defendant alleges was granted to him on the fourth day of March, A. D. 1913, instead of March 14, 1913, as alleged in said bill of complaint.

2. Answering subdivision II, defendant admits the making and executing of the contract dated November 2, 1908, a true copy of which is annexed to the bill of complaint, marked Exhibit A; and denies the allegations of said complaint as to the legal effect of said instrument; and denies that it contains any matter, or purports to be anything different, than what appears upon the face thereof, and in further answer submits said contract Exhibit A to the court.

Defendant admits that on or about March 25, 1909, the 186 Hertz Electric Company was incorporated under the laws of the State of West Virginia; but in that behalf defendant alleges that said Hertz Electric Company was, as defendant is informed and verily believes, organized under the laws of said State as a nonresident corporation; and that at said time said plaintiff had its principal office and place of business at the City of Tiffin, in the State of Ohio, and that it did not then, and has at no time since maintained any office or place of business in said State of West Virginia, and that none of its officers or directors have ever resided in said State.

Defendant admits that the Webster Manufacturing Company, on or about March 26th, 1909, transferred its rights under said contract of November 2, 1908, Exhibit A of the bill of complaint, to the Hertz Electric Company; and that thereafter, and on or about July 22, 1909, the corporate name of said Hertz Electric Company was changed to Webster Electric Company.

And in this behalf, defendant alleges that said contract,

Exhibit A, was, on or about the 30th day of March, A. D. 1912, and thereafter, canceled, terminated and annulled by this defendant and the defendant Henry Joseph Podlesak, because of the failure of the plaintiff Webster Electric Company, the assignee of the license therein named, to pay the royalties provided in said contract and to otherwise comply with the covenants, terms and conditions thereof on its part; that said termination and cancellation was fully agreed to and acquiesced in by the plaintiff; that after said contract was annulled and terminated, the defendants Podlesak, at said plaintiff's special instance and request, from time to time gave special permits to the plaintiff to manufacture and sell certain of the devices in said contract described to fill specific orders which said Webster Electric Company had at the time each such special permit was granted, and not otherwise: 187 and alleges further that after the termination of said contract, said Webster Electric Company retained no right, title or interest thereunder, and had no right, title or interest in the inventions and patents described in said contract, except the bare right granted from time to time, in each case at plaintiff's special request, to manufacture and sell certain of said inventions, for the sole purpose of filling orders secured by said plaintiff at different times and on hand when each special permit was granted; that because of the premises, said contract, Exhibit A, ceased to be effective for any purpose after March 30th, 1912, and that said plaintiff had no rights thereunder.

3. Answering subdivision III, this defendant admits the making and execution of the contract of assignment and transfer between the defendants of Podlesak, Exhibit B; and alleges that plaintiff was advised and knew of said assignment and transfer at the time it was made.

4. Answering subdivisions IV, V and VI, admits the execution of the contracts of the fifth day of February, 1914, set out as Plaintiff's Exhibits C and D of said bill of complaint; and admits that the contracts Exhibits C and D are parts of one and the same transaction; and admits the execution, on the 20th day of January, 1915, of a certain other contract termed supplemental agreement, a true copy of which is set out as Plaintiff's Exhibit E of said bill of complaint; and in connection with said Plaintiff's Exhibits B, C, D and E, this defendant denies that said contracts grant plaintiff any rights or contain anything other than as stated on the face of each

said contracts, or that the legal effect of said contracts is any different from what said contracts on their face purport to be; and in so far as the allegations of subdivision IV, V and VI are inconsistent therewith defendant denies the same, and in support of such denial, exhibits said contracts to the court.

188 5. Answering the VIIth subdivision of said complaint, defendant admits that plaintiff was and is authorized to manufacture and sell electric generators and ignition devices for internal combustion engines and that it has been engaged in said business. Defendant denies that the Webster Manufacturing Company was the predecessor of the plaintiff, but admits that said Webster Manufacturing Company was, prior to the organization of the plaintiff, engaged in attempting to develop and put upon the market electric generators and ignition devices embodying the Milton and McInnerney patents.

Defendant alleges that he has no knowledge as to the amount expended by plaintiff in building up its business, and alleges that, as this defendant is informed and verily believes, the greater part of the expenditures made by the plaintiff were made in an attempt to develop and perfect an ignition device for automobile engines, and the Milton and McInnerney devices mentioned, and was not expended in reliance upon the inventions of the Podlesaks, which said inventions mentioned and described in Plaintiff's Exhibit A were perfected and workable prior to and at the time the contract Exhibit A aforesaid was entered into between the Podlesak Brothers and the Webster Manufacturing Company; and denies that the expenditures made by said plaintiff were based wholly and entirely or in any large degree upon the electric generators and ignition devices embodying the Podlesaks' inventions.

6. Answering subdivision VIII of said bill of complaint, defendant admits that he was employed by plaintiff on August 10, 1909, at a salary of \$125 per month; and alleges that said employment was under and pursuant to one certain contract in writing of that date, made and entered into between plaintiff and defendant, a true copy of which is hereto annexed, marked Defendant's Exhibit 1, and made a part hereof. Defendant admits that under said contract he agreed
189 to experiment and endeavor to perfect an attachment to attach the magneto, then being manufactured by plaintiff under the Milton and McInnerney patents, to gasoline engines, as in said contract provided; but specifically denies that it was any part of his duty under said contract, or under

his employment, to do any experimental or development work on the magneto and ignition devices covered by the Podlesak inventions mentioned in Exhibit A of plaintiff's bill of complaint; and denies that he represented himself to be efficient in the perfection of improvements or inventions to be used in connection with the generators manufactured, sold and dealt in, or to be manufactured, sold and dealt in by plaintiff.

Defendant alleges that the history and facts of defendant's employment under said contract are as follows:—

Between August 10 and September 8, 1909, he moved to Chicago and was at plaintiff's Chicago office and factory at Chicago.

On September 8, 1909, he went to Tiffin, Ohio, and assisted in the organization of plaintiff's factory which was then being located at that point for the purpose of manufacturing an automobile engine magneto which plaintiff was endeavoring to perfect under the Milton patents, to enable plaintiff to fill a contract for ten thousand automobile engine magnetos; that the organization of said factory and the work defendant put on said automobile magneto and the Milton magneto for stationary engines occupied the months of September, October, November and part of December, 1909; that during December, 1909, defendant went to Chicago and entered the sales department of plaintiff's business; that in January, 1910, he went on the road, traveling from the Chicago office as his headquarters, in plaintiff's interest; and spent most of that month traveling as a salesman and in visiting purchasers of magnetos, and attempting to make said devices in the hands of

said purchasers work in actual practice; that February, 190 1910, was spent in plaintiff's Chicago office or at the Automobile Show, where plaintiff had an exhibit; that other parts of February and March, 1910, were spent on the road in plaintiff's interest as aforesaid; that plaintiff having failed to make a success of said Milton automobile magneto upon which it had devoted practically its entire time and energies to the neglect of its line of magnetos for stationary engines, abandoned said device along in March, 1910; that on or about April 1, 1910, defendant requested of plaintiff that he be relieved of further services under said contract; that thereafter and about April, 1910, defendant, at plaintiff's solicitation, went back to plaintiff's factory at Tiffin, Ohio, under a special arrangement, to endeavor to invent and perfect an automobile engine magneto that would work; and spent his time in that behalf at said factory, or on special trips on the road in plaintiff's interest; that on May 10, 1910, the contract

Defendant's Exhibit 1 was finally and in all respects terminated, and thereafter ceased to be in force or effect for any purpose. That during the period of his employment under said contract Exhibit 1, defendant was unable to invent, and did not invent, any new and useful improvements whatever; and that all work and experiments done and performed by said defendant during his employment under said contract were in fact turned over to and left with plaintiff.

Defendant denies that his salary was increased to \$150 per month under the employment mentioned in subdivision VIII of said complaint, and on the contrary alleges, that after the termination of the contract Defendant's Exhibit 1 on May 10, 1910, as aforesaid, a new contract was made and entered into in writing between plaintiff and defendant, May 18, 1910, for the term and period of one year, at a salary of \$1800, payable in monthly installments of \$150 each; that a true copy of said contract is hereto annexed, marked Defendant's Exhibit 2, and made a part of said answer.

That pursuant to said contract Defendant's Exhibit 2, 191 and not otherwise, defendant moved his family to Tiffin,

Ohio, and entered plaintiff's employ at its factory there located, in the capacity and under the terms and conditions in and by said contract prescribed. That during the months of June, July, August, September and part of October, 1910, plaintiff, still persisting in its attempt to devise and perfect a magneto for use on automobile gasoline engines, to the neglect and exclusion of its regular line of magnetos for stationary gas and gasoline engines, as the fact is, required that defendant devote all his spare time which his other duties to plaintiff permitted, in an attempt to perfect such device; and that, during said period, defendant was unable to give and did not give any time or attention to the development or improvement of any other style or type of magneto whatever; and further alleges that during said period he did not conceive of, invent, perfect, or reduce to practice any new improvements in or pertaining to magnetos whatsoever.

That, in the latter part of October, 1910, plaintiff, having abandoned its attempt to devise and perfect an automobile magneto, set defendant at work in the matter of the manufacture of the magneto and ignition devices manufactured by plaintiff under the Podlesak inventions mentioned in Exhibit A of plaintiff's complaint, and defendant, in that behalf, set about endeavoring to improve said magneto and ignition apparatus in actual practice so as to render it fit for practical use.

7. Answering the allegations of paragraphs or subdivisions IX, XI and XII of said bill of complaint relating to the inventions of this defendant, defendant, admits that as a part of his general plan of improvement and development of the magneto which plaintiff was getting in condition to manufacture under the Podlesak patents, this defendant during the months of November and December, 1910, conceived certain improvements which were afterwards and during the years 1911 and 1912 in their details reduced to practice, and 192 upon which the following applications, among others not here in controversy, were made, and patents granted to this defendant, that is to say:—

Application Serial Number 639,738, filed July 21, 1911, for magneto machine involving magneto details and structure, upon which was granted Letters Patent No. 1,098,052, May 26, 1914; and Application Serial Number 668,153, filed December 27, 1911, on an Inductor Alternator, involving details of magneto structure, upon which was granted Letters Patent No. 1,098,754, June 2, 1914, which was a division of application Serial No. 639,738.

Application Serial Number 690,921, filed April 15, 1912, for spark plug and bracket combined, upon which was granted Letters Patent No. 1,055,076, March 4, 1913.

Application Serial Number 734,143, filed November 29, 1912, for a starting lever, upon which was granted Letters Patent No. 1,101,956, June 30, 1914.

Defendant admits that said inventions were worked out partly on plaintiff's time and partly on defendant's time, and denies that they were conceived or worked out on plaintiff's time exclusively; admits that said inventions were reduced to practice during the years 1911 and 1912, and alleges that such reduction to practice was for the primary purpose of enabling plaintiff to determine whether said improvements should be incorporated into plaintiff's product as provided in the contract Defendant's Exhibit 2 under the Podlesak patents.

Concerning defendant's invention of July 21, 1911, evidenced by Application Serial No. 639,738, and by Letters Patent No. 1,098,052, defendant denies that plaintiff ever agreed to pay, or in fact paid the expense of the preparation and filing of said application, or the prosecution thereof, and the securing of said patent, or any part of said expenses; admits that said application was prosecuted by attorneys who represented plaintiff in its patent matters and business; and denies

that the attorneys who prosecuted said application were
193 plaintiff's attorneys in that behalf, and alleges that all
said expenses were paid by this defendant out of his own
means, and with plaintiff's full knowledge at the time, as will
hereafter appear.

Answering as to divisional applications Serial Number 868,-
153, filed December 27, 1911, on which were granted Letters
Patent No. 1,098,754, June 2, 1914, Application Serial Num-
ber 690,921, filed April 15, 1912, on which were granted Let-
ters Patent No. 1,055,076, May 4, 1913, and Application Serial
Number 734,143, filed November 29, 1912, on which was
granted Letters Patent No. 1,101,956, June 30, 1914, defend-
ant specifically denies that he delayed or postponed making,
or failed to file applications on said inventions, or any other
inventions made by him during the period covered by his em-
ployment with plaintiff; and denies, that said, or any other ap-
plications for patent were prosecuted secretly, or surrepti-
tiously, or without the knowledge or consent of plaintiff, or
contrary to the terms, letter or spirit of any contract, agree-
ment or understanding whatsoever between plaintiff and this
defendant; admits that said three applications were prose-
cuted by attorneys other than plaintiff's attorneys; denies
that plaintiff did not discover the facts until long after, or at
any time after, said applications were made; and denying all
allegations of fraud and wrongdoing in the premises, defend-
ant denies that this defendant in any manner co-operated or
connived with the defendant Henry Joseph Podlesak fraudu-
lently to make applications for United States patents; denies
that said applications for patents or any of them were prose-
cuted by defendant Henry Joseph Podlesak.

8. Further answering, defendant alleges that at all times
while at plaintiff's factory, his place of work and the experi-
mental department, so called, was in the same room as plain-
tiff's general office; that defendant and his work was un-
194 der the constant supervision and observation of plain-
tiff's managing officers and employees; that he reported
all progress as it was made, and fully disclosed to plaintiff's
managing officers all his discoveries, improvements and in-
ventions as soon as they were made. And, in connection with
the patents which plaintiff now claims by virtue of defend-
ant's employment, defendant alleges that the right to manu-
facture and sell under said inventions was offered to plain-
tiff by defendant from time to time when made, and thereafter
kept good at all times; that defendant, being then under the
impression that the contract Defendant's Exhibit 2 required

plaintiff to pay the expenses of patenting said inventions, requested plaintiff to defray the expenses of securing patents thereon; that after considerable work was done in plaintiff's shop thereon, plaintiff refused to assume or pay any of the expenses of securing Letters Patent, or to have anything to do therewith; that, after such refusal, this defendant, having been advised that plaintiff was not obligated to pay such expense, with plaintiff's full knowledge, and to the end that his valuable property rights therein be preserved, took said inventions to Brown & Williams, attorneys who then represented plaintiff in patent matters, and was advised by said attorneys that the only part patentable was that embodied in Application Serial No. 639,738, filed July 27, 1911, and that the remainder was not patentable, in the opinion of said attorneys; that thereupon defendant directed Brown & Williams to secure if possible said patent, and thereafter, with plaintiff's full knowledge, took the remainder of said invention to another attorney, who prosecuted the applications thereon, which were filed in 1911 and 1912, and finally secured Letters Patent No. 1,098,754, under date of June 2, 1914, on an Inductor Alternator; No. 1,055,076, dated March 4, 1913, on a spark plug and bracket; and No. 1,101,956, dated June 30, 1913, on a starting lever; that defendant paid out of his own funds all the expenses of the preparation of applications, 195 the prosecution and the securing of said patents, as he had the right to do under his then existing contract with plaintiff, Defendant's Exhibit 2.

Defendant further alleges, that throughout all said period during which the above and foregoing improvements and applications for patents were made, said contract Defendant's Exhibit 2 was, and remained, in full force and effect, and without any change whatever in so far as any rights claimed by plaintiff in defendant's inventions made during that period are concerned, up to the third day of March, 1913, when the contract, a true copy of which is hereto annexed, marked Defendant's Exhibit 3, and made a part hereof, was made and entered into, and under which defendant continued in plaintiff's employ until his discharge by plaintiff May 14, 1915.

Referring back again to subdivision VIII of said bill of complaint, defendant admits that during his employment with plaintiff he acquired a general knowledge of plaintiff's business; admits that in the course of his work he used whatever tools or testing apparatus plaintiff furnished for that purpose; denies that his employment was in any respect confidential in character; denies that plaintiff had any plans or

secrets whatever, or that plaintiff divulged to defendant any knowledge whatever that was not open and known generally to the employees of plaintiff who might care to take the trouble of finding out any facts relating thereto; and denies that he ever proved unfaithful to, or abused, any trust or confidence reposed in him whatever.

Defendant denies that he was appointed factory superintendent May 18, 1910, and alleges that he was not so appointed, and did not assume the duties of that position, until January 1, 1912. Defendant admits that shortly after May 18, 1910, he was placed in plaintiff's experimental department as a draftsman and experimenter; that on or about January 1, 1912, he was made plaintiff's factory superintendent; 196 that in March, 1912, he was elected a director and secretary of plaintiff corporation, and on March 3, 1913, he was given general charge of the manufacturing, experimental and production departments of plaintiff's business under the supervision and control of the plaintiff's board of directors, pursuant to the contract of that date, Defendant's Exhibit 3 hereof, to which reference is hereby made, and not otherwise; and that his salary was fixed as provided in said contract.

9. Further answering plaintiff's claim of and to rights in defendant's inventions other, greater or different than the rights expressly granted by defendant to plaintiff; and, in answer to the allegations of said complaint, wherever said allegations may appear therein, to the effect that plaintiff was or is entitled to any such other, greater or different rights because of defendant's employment, defendant denies that he ever hired out to, or was employed by, plaintiff as an inventor or experimenter, or superintendent, or secretary, or director, or in any other capacity whatsoever in the sense that plaintiff became by virtue of such employment or relationship entitled to the ownership of, or any rights in, defendant's inventions other, greater or different than have heretofore been granted by and under the contract Defendant's Exhibit 2, on performance by plaintiff of the conditions therein prescribed; and defendant denies that there ever existed any understanding or agreement whatsoever with plaintiff which conferred any rights on plaintiff in said inventions, or any of them, by virtue of or arising out of defendant's employment in any capacity whatsoever; denies that said inventions, or any of them, were made as part of this defendant's duty, or for plaintiff's benefit; denies that said inventions, or any of them or the patents granted thereon belonged, or now belong to

plaintiff, or that plaintiff was or is entitled to any rights other than the right to manufacture and sell devices embodying such inventions under royalty, as prescribed in the contract, 197 Defendant's Exhibit 2; denies that said inventions or any of them were ever incorporated into plaintiff's product otherwise than pursuant to and by virtue of the contract Defendant's Exhibit 2, and special licenses and permits granted at plaintiff's request, by this defendant, and later by the defendants Podlesak, after defendant's brother had acquired the interests in this defendant's inventions set forth in the contract Exhibit B of plaintiff's complaint.

Answering the various allegations in subdivisions X to XIV, inclusive, with reference to the defendant Henry Joseph Podlesak:

Defendant admits that he defendant Henry Joseph Podlesak is a brother of this defendant and is a registered patent attorney; but in this behalf alleges that said Henry Joseph Podlesak is not an attorney at law or learned in the law, and is not a member of the bar of this or of any other court, and has never been licensed to practice law in this or any other state or district. Defendant admits that Henry Joseph Podlesak knew that this defendant had made the inventions described in said bill of complaint and in Plaintiff's Exhibit B to said bill, assisted in the preparation of applications for patents thereon, and knew that this defendant worked for plaintiff; and denying that either defendant Podlesak has done anything wrong, denies that said Henry Joseph Podlesak has been familiar or is now familiar with any other transactions and doings of this defendant described in said bill of complaint; and denies that said Henry Joseph Podlesak has sided, assisted or co-operated with this defendant in any transportations or doings charged against him as wrongful in said complaint.

10. Answering subdivision XIII of said bill of complaint, defendant admits that the invention described and claimed in Letters Patent No. 1,022,642, which was granted April 9, 1912, to the defendant Henry Joseph Podlesak, and not to this answering defendant, is not in and of itself an electric generator, but is capable of use in connection with 198 and as a part of electric generators and ignition devices such as were sold and dealt in by plaintiff; denies that said invention is of utility only when incorporated in or used in connection with or as a part of electric generators and ignition devices, and alleges the truth to be that said invention is of utility and is very extensively used in connection with

sparkling mechanism and ignition devices entirely different in principle from those manufactured and sold by said plaintiff, and that said invention constitutes a separate article of sale, and is of utility generally in the matter of producing the spark necessary to ignite the gas in an internal combustion engine.

Defendant admits that the defendant Henry Joseph Podlesak, after the patent to him therefor had been granted, and not otherwise, imparted to this defendant knowledge of said invention; denies that he arranged or agreed with said Henry Joseph Podlesak to incorporate said invention into the electric generators and ignition devices sold by the plaintiff; denies that plaintiff is the owner of, or has any exclusive right or title in said patent or in the invention disclosed thereby. Defendant alleges that as soon as this defendant learned of the invention, he called the attention of the plaintiff thereto and advised that plaintiff arrange with said Henry Joseph Podlesak for the right to use his invention; and that thereafter said invention was from time to time, pursuant to special permits granted, incorporated in the ignition devices manufactured by the plaintiff, beginning with the month of September, 1912, at plaintiff's special instance and request, with plaintiff's full knowledge and consent, and as defendant verily believes at the time, with the knowledge and consent to said Henry Joseph Podlesak, and not otherwise; and that said invention was not used by plaintiff until more than six months after the patent therefor had been granted 199 to said Henry Joseph Podlesak.

Answering that portion of said XIIIth subdivision set out on page 21 of said bill of complaint, defendant, on information and belief, admits that during the month of April, 1912, the defendant Henry Joseph Podlesak brought to the attention of plaintiff the fact that applications for Letters Patent Serial No. 639,738, dated July 21, 1911, No. 668,153, dated December 27, 1911, and Serial No. 690,921, dated April 15, 1912, had been made, and alleges that plaintiff previously thereto had acquired from this defendant full knowledge of all said inventions and applications; denies that said Henry Joseph Podlesak called plaintiff's attention at that time to application Serial No. 734,143, dated November 29, 1912, and alleges that said plaintiff previously had acquired from this defendant Emil full knowledge of said invention and application; denies that any of said inventions had at that time been incorporated in plaintiff's product, or at any other time except in pursuance of express license from the Podlesaks;

admits and alleges that said Henry Joseph Podlesak advised plaintiff at that time that the license contract, Plaintiff's Exhibit A, had been terminated and canceled and that plaintiff had no right to manufacture thereunder devices involving any of the therein-mentioned Podlesak patents; admits that said Henry Joseph Podlesak informed and advised plaintiff that if it insisted upon manufacturing, and manufactured, the devices embraced in the said Podlesak patents without authority, it would be infringing said Podlesak patents, and that if it incorporated therein the invention described in Letters Patent No. 1,022,642, without permission, it would infringe said patent; and in this behalf defendant alleges that said statements were true in point of fact when made, but were made pending negotiations for a license and permit from the defendants Podlesak to the plaintiff to continue the manufacture of said magnetos and accessories covered by said Podlesak patents.

11. Answering subdivision XIV of said bill of complaint, defendant denies that the invention covered by Letters Patent 1,022,642, was so combined and used in plaintiff's product that it could not be segregated without injury to plaintiff's business, and alleges the truth to be that said device could be segregated therefrom without in any manner impairing the utility of the magneto manufactured by said plaintiff; and denies that this defendant took any advantage whatever of the situation alleged and claimed to exist in subdivision XIV of said complaint, or any advantage whatever of plaintiff; admits that after the contract Exhibit A was terminated, Henry Joseph Podlesak advised plaintiff it was or would be, if it continued to manufacture under the Podlesak patents, infringing the same; admits that plaintiff, after the termination of the contract Exhibit A, was repeatedly requested either to enter into a license agreement embodying Patent No. 1,022,642 and such of the other Podlesak patents as plaintiff might desire to use, or to cease manufacturing under said Podlesak patents entirely.

This defendant denies that the contracts Exhibits C and D were induced by, or the result of any threats or demands by this or by the defendant Henry Joseph Podlesak whatsoever, and alleges that said contracts were the result of long and protracted negotiations, which extended and were conducted intermittently between March 30, 1912, and February 5, 1914, due in part to plaintiff's uncertainty whether it would continue in business, in the course of which these defendants were not represented by any attorneys, but that the plain-

tiff was represented by its attorneys, and that said contracts were, at plaintiff's instance, drawn by the plaintiff's attorneys and submitted to these defendants and executed as finally, fully and freely agreed upon by said plaintiff, and 201 not otherwise; and defendant admits that Exhibits C and D were both entered into as part of the same transaction, having to do generally with plaintiff's rights to manufacture and sell under the Podlesak patents, therein mentioned. That for convenience of reference, hereto annexed, marked Defendant's Exhibit 4, which defendant prays may be deemed a part of this answer, is a schedule showing the history of each patent, the name of the inventor, and patentee, character of device, and the contract, Plaintiff's Exhibit, which grants the plaintiff the right to manufacture and sell each invention.

12. Answering subdivision XV, defendant admits that the plaintiff and defendants Podlesak proceeded to, and did, act under Exhibits C and D until the 20th of February, 1915, at which time the contract Exhibit E was executed between the parties; that the result of said Exhibit E operated as a reduction in the royalties upon each machine subject thereto, to be paid by said plaintiff to the Podlesak brothers; that the negotiations finally resulting in the contract Exhibit E extended over five or six months. Defendant denies that there existed prior to the execution of the supplemental agreement Exhibit E, January 20, 1915, any oral agreement or understanding relating to a change in the royalties or the manner of payment thereof; and alleges that the only change made in the contracts Exhibits C and D is that set forth and contained in the supplemental agreement Exhibit E aforesaid.

13. In answer to the allegations of the XVIth subdivision of said complaint, defendant alleges that on the 15th day of April, A. D. 1912, when application resulting in letters patent 1,055,076 was made, this defendant was not under any agreement whatever with plaintiff to turn over said or any inventions made by him, or any patent granted thereon, to plaintiff, and that plaintiff had no right whatsoever there- 202 in excepting a right to acquire a shop right license thereunder, pursuant to the terms and conditions of the contract, Defendant's Exhibit 2; that said Letters Patent 1,055,076, were granted March 4, 1913. That thereafter and late in the year 1914, the plaintiff, who was contemplating suit for infringement against certain manufacturing corporations, as defendant is informed and verily believes, took up said

Letters Patent 1,055,076 with plaintiff's patent attorneys and was advised by said attorneys that said patent would be surrendered and application for reissue be prepared and prosecuted, in order to correct errors in the specifications of said patent and to aid in its case against the parties deemed by plaintiff to be infringing the same; that accordingly application for reissue was prepared by plaintiff's attorneys and executed by this defendant at plaintiff's request, and as said defendant was under the contract Exhibit D, dated February 5, 1914, obligated to do, and for which said plaintiff under said contract was obligated to pay, and not otherwise. And defendant admits that said application was prosecuted and the Letters Patent were reissued February 9, 1915, under and as No. 13,878; denies that the prosecution of said application and the securing of said reissue was for plaintiff.

Further answering and excepting only as hereinbefore expressly admitted, qualified or explained, defendant denies each and every allegation contained in subdivisions VIII to XVI, both inclusive, of plaintiff's complaint.

14. Answering generally the allegations of subdivisions VIII to XVI, inclusive, of plaintiff's bill of complaint, and the claim of plaintiff of title to or ownership of defendant's inventions, applications for patent and letters patent, and the plaintiff's claim that it ever owned or now owns said inventions, or any of them, or any part thereof, or any exclusive right thereunder, or any rights therein or there-to other, greater or different than have been expressly granted under temporary shop right licenses from time to time, and under the contract Plaintiff's Exhibits C, D and E, this defendant, denying all such allegations and claims, and repeating his denial thereto and thereof wherever such allegations and claims appear in said complaint, alleges, that he never at any time, by word or act, granted to, or gave plaintiff to understand that it had, any rights in any of defendant's inventions, applications for patents, or patents thereon, or any part thereof, other or different than the right to manufacture, use, and sell devices embodying such of said improvements as plaintiff desired from time to time to manufacture and sell, under and by virtue of the contract Defendant's Exhibit 2, and of temporary shop right licenses and permits as hereinbefore more specifically alleged, and finally under the contracts Plaintiff's Exhibits C, D and E.

15. And this defendant, denying that the contract Defendant's Exhibit 1 of this answer was in force or effect when

the inventions of this defendant here in controversy were made, alleges that if, notwithstanding such denial, the court should find the contrary, that nevertheless said contract did not and does not of its own force and virtue vest in plaintiff any rights, title or interest in defendant's inventions, but, on the contrary, left it optional with plaintiff to adopt and pay the expense of patenting defendant's inventions made during the period while said contract was in effect; that plaintiff did not at the time any of said inventions were made, or at any time since, advise this defendant that said improvements, or any of them, were valuable to plaintiff, or that said plaintiff considered it desirable to patent them, or offer to defray the expenses of patenting the same, or make any request or demand whatever for the assignment of said improvements, or any of them, and did not in any respect comply with the requirements of said contract Defendant's Exhibit 1 in that behalf; and that, because of the premises, in event the court finds that said contract Defendant's Exhibit 1 was in force during said period, plaintiff should nevertheless be held and adjudged to have waived and relinquished any and all claim it might otherwise have had in said inventions and each of them, arising out of said contract or defendant's employment thereunder.

And defendant, repeating the allegation that his inventions here in controversy were each and all conceived, made, and reduced to practice during the period when the contract Defendant's Exhibit 2 was in force, and not otherwise, states that in each instance, during the progress of defendant's work in that behalf, said inventions were offered to plaintiff under and pursuant to the terms and provisions of the contract Defendant's Exhibit 2, and to no one else, and that it was only after plaintiff refused to assume or agree to pay the expense of the preparation and prosecution of applications for patents, that defendant took out the patents thereon on his own account and at his own cost and expense, as more particularly alleged in subdivision 9 of this answer.

16. Defendant further alleges that plaintiff did not at the time said inventions were made, or at any time since, up to the time of the commencement of this action, make any claim of title to, or ownership of, said inventions or any of them; and that said plaintiff never claimed any rights therein other or different than it could have acquired under the terms and provisions of the contract, Defendant's Exhibit 2; and that said plaintiff in and by the second paragraph of the contract Plaintiff's Exhibit D, has ratified, confirmed and approved

all and singular the acts and counts of the defendants Podlesak, now charged by plaintiff as fraudulent and wrongful, in the matter of the making, filing and prosecution of the applications for patents on this answering defendant's inventions here in controversy, up to February 5, 1915, and 205 agreed that the prosecution of said applications should continue in the name, on behalf and at the expense of this defendant as theretofore, and that the defendant Henry Joseph Podlesak should aid and assist this defendant in said matters.

17. That said plaintiff, having, on and after the 30th day of March, 1912, lost its rights under the contract of November 2, 1908, Plaintiff's Exhibit A, as stated in paragraph 5 of this answer, and as the fact is, operated under temporary licenses given to, at plaintiff's request, and accepted by, plaintiff from time to time, to fill orders as they were received by plaintiff, from said March 30, 1912, up to and including February 5, 1914; that on August 17, 1912, the agreement, Exhibit B of plaintiff's complaint, was entered into between the defendants Podlesak, assigning to each other interests in the letters patent and applications therein mentioned; that a part of the consideration for said contract, Exhibit B, was the work done by said Henry Joseph Podlesak, in the preparation of the applications for this defendant's patents mentioned in paragraphs VIII and XVI, of said bill of complaint; that said plaintiff was fully advised of said agreement and made no objection thereto, but on the contrary continued to negotiate with both the defendants Podlesak, through the defendant Henry Joseph Podlesak, on the basis of the fact that said last named defendant was the lawfully owner and holder of the interests in the inventions, and the applications for patents, and the patents issued to this answering defendant and conveyed by him to said Henry Joseph Podlesak under the contract Exhibit B, and upon the further basis of the fact that this answering defendant had and owned the interest specified in the contract Exhibit B, in and to the patents upon the joint inventions of the Podlesak Brothers and the separate inventions of the defendant Henry Joseph Podlesak 206 mentioned in said contracts Exhibits C and D; and that said plaintiff did not at any time while said negotiations were in progress claim any right, title or interest whatsoever in or to any of the inventions or patents of this answering defendant.

18. That during the period covered by the negotiations

which finally resulted in the contracts Plaintiff's Exhibits C and D, the plaintiff and its attorneys had before them and had knowledge of defendant's employment contracts Exhibits 1 and 2, as well as all and singular this defendant's inventions, applications for patents, and the patents theretofore granted thereon, and was by the defendants Podlesak given the right freely to select those of this defendant's inventions it might desire to incorporate in plaintiff's product; and that the plaintiff selected those inventions of this defendant listed in defendant's Exhibit 4 hereof to which reference is made, which were finally incorporated in the contract Plaintiff's Exhibit D. That excepting only the joint invention of the defendants Podlesak evidenced by Application Serial No. 76559, filed September 25, 1901, on which was granted March 18, 1913, Letters Patent No. 1,056,360, and the separate invention of Henry Joseph Podlesak evidenced by patent No. 1,022,642, granted April 9, 1912, the inventions, applications for patent and patents set forth and described in the contract Plaintiff's Exhibit D are the identical inventions, applications for patent and patents mentioned in subdivisions IX, XI, XII, XIII, XIV, XV and XVI of plaintiff's bill of complaint. That said plaintiff repeatedly, both prior to and at the time the contracts Plaintiff's Exhibits C and D were executed, advised the defendants Podlesak that it had no use for the inventions not included in said contracts Plaintiff's Exhibits C and D, and rejected the same; and that because thereof, all rights now claimed by plaintiff in the invention of this defendant not embraced within and granted under the terms and provisions of the contracts Plaintiff's Exhibits C and D, remained in the defendants Podlesak.

207 19. Defendant further alleges that, as appears by its terms, said contract, Plaintiff's Exhibit D, grants to said plaintiff a non-exclusive shop right license under letters patent 1,056,360, which is the joint invention of the defendants Podlesak, made long prior to the time this defendant entered into plaintiff's employment, and upon letters patent No. 1,022,642, which was and is the separate invention of the defendant Henry Joseph Podlesak, who was never in the plaintiff's employ, and to each which last named patents said plaintiff had no rights whatsoever; that in addition thereto, under the contract Exhibit C, made at the same time and as part of the same transaction, said defendant was granted an exclusive shop right license in the joint inventions of the defendants Podlesak, therein mentioned and described, which joint inventions were devised and invented by the defend-

ants Podlesak jointly long prior to the time this answering defendant entered into plaintiff's employ.

20. Defendant further alleges that after the contracts Exhibits C and D were executed, the plaintiff, as alleged in subdivision XV of its bill of complaint, continuously operated thereunder, manufacturing and selling magnetos and inductor generators and the accessories covered by the patents specified in said contracts, and paying the royalties prescribed therein, without claim or question, up to the 20th day of January, 1915, when the supplemental agreement, Exhibit E of said bill of complaint, was executed; and that thereafter said plaintiff continued to operate under said contracts, Exhibits C, D and E, without claim or question as to the existence of any rights in the patents granted to this answering defendant during the period when he was employed by said plaintiff, other or different from the rights specified in said contracts; that defendant's employment with plaintiff was terminated May 14, 1915; that said plaintiff made

no claim at any time at or subsequent to the termination of said employment of any rights in and to said inventions or patents, other or different from the rights provided in said contracts Exhibits D and E, and that at no time between the 10th day of August, 1909, and the time of the commencement of this action did said plaintiff make any claim whatsoever in and to defendant's said patents or any of them, adverse to the rights of this defendant, or other or different from the rights granted to said plaintiff under said contracts Exhibits C, D and E.

21. Defendant further alleges that, relying upon the foregoing situation, and honestly believing that said plaintiff had no rights, and did not claim any rights in defendant's inventions made during the period of said employment or in the patents thereon, other or different from the rights expressly granted by the defendants Podlesak to the plaintiff in and by the contract, Exhibit D, and the supplemental contract, Exhibit E, this defendant joined in the execution of the transfer of his interest in said patents and in the contracts Exhibits C, D and E, to the defendant corporations, on the fourth day of September, A. D. 1915, in the so-called "Splitdorf Contract", Plaintiff's Exhibit F, to which reference is hereby made, and in and by which this defendant transferred to said defendant corporations all of his right, title and interest in and to the inventions and patents thereon, described in said Exhibits C, D and E, and did further in and by said contract, Exhibit F, covenant and warrant to said defend-

ant corporations that he had good right to make said transfer, and that said transfer carried to said defendant corporations all this defendant's rights in and to said patents not previously transferred to the plaintiff under said contracts Exhibits C, D and E.

22. Defendant further alleges that by virtue and because of the foregoing, if said plaintiff ever had any rights in and to the defendant's inventions, or the applications for patent, or the patents thereon, described in Exhibit D, growing out of the employment of this answering defendant by the plaintiff, said rights became extinct upon the execution of the contract, Exhibit D, and all rights therein became finally merged in said contracts, C, D and E; that said plaintiff should be held and adjudged, under the terms of the employment contract, Defendant's Exhibit 2, and for a good and valuable consideration expressed in said contracts, Exhibits C, D and E, and by plaintiff received, to have waived and relinquished any and all rights, if any, and any and all claims of right, if any, it might otherwise have had in and to this answering defendant's inventions and the letters patent thereon, other and different from those expressly granted in Exhibits C, D, and E aforesaid; that said plaintiff should be held and adjudged to have acquiesced in the original, sole and undisputed ownership of and in this defendant of his inventions and in said letters patent, and in the transfer of the portion of defendant's interests therein to the defendant Henry Joseph Podlesak under the contract Plaintiff's Exhibit B; that said plaintiff should be held and adjudged to have fully ratified and confirmed the contracts Exhibits C and D by the execution of, and operation on its part under, the contract of January 20, 1915, Plaintiff's Exhibit E, in the affirmance thereof, and by its election to affirm said contracts taken and made by its bill of complaint in this case; that said plaintiff was and is, and should be held and adjudged, guilty of gross and inexcusable laches and negligence is not asserting any rights or claim of right which it now claims in said inventions of this defendant and the patents thereon at the time said Exhibits C and D were being negotiated; and that said plaintiff is and should be held and adjudged to be estopped and precluded by and under said contracts Exhibits C, D and E, and by its election to affirm said contracts made and taken in this case, and by its conduct, from now claiming or being heard to claim any other or different rights in this defendant's said inventions

210 and patents than the rights expressly granted under the contracts C, D and E, and from now claiming or being heard to claim that this defendant had no right to transfer his interest in said patents and in said contracts Exhibits C, D and E to the defendant corporation under said contract, Plaintiff's Exhibit F, termed in the bill of complaint the "Splitdorf Contract".

23. Answering the XVIIth subdivision, this defendant denies that plaintiff has fully and faithfully kept and performed each and all of the terms and agreements contained in the contracts Exhibits C, D and E on plaintiff's part; and alleges that said plaintiff has failed and neglected to account for and to pay over to this defendant and to the defendant Henry Joseph Podlesak all the royalties which accrued for the quarterly period ending June 30, 1915, and the royalties which accrued under said contracts to the defendants Podlesak prior to the assignment thereof dated September 4, 1915, Exhibit F of the bill of complaint, or for the quarterly period expiring September 30, 1915, in accordance with the true meaning, intent and spirit thereof, and has sought to secure unwarranted deductions from the royalties for the quarter expiring June 30, 1915, and to go back of and surcharge plaintiff's accounts rendered and settled for by it during previous royalty periods, and has in its administration of said contracts construed them against the defendants Podlesak in a manner unduly harsh and severe, for the purpose, as this defendant is informed and verily believes and charges the fact to be, of endeavoring to enforce the allowance by the defendants Podlesak of deductions from the moneys justly due said defendants, and in indulging in long correspondence with the defendant Henry Joseph Podlesak with a view of attempting, as this defendant is informed and verily believes, to secure admissions and to create estoppels as against these defendants in the assertion of their just rights under said contracts; and has since defendant's discharge

from plaintiff's employment, May 14, 1915, further 211 ther breached said contract, as previously construed and acted upon by the parties, by cutting the name "Podlesak" out of the electro-types and printed matter illustrating said device in plaintiff's advertising matter, and by changing the location of the same "Podlesak" upon the magnetos and ignition devices manufactured by said plaintiff from a prominent and most conspicuous place to an inconspicuous place where said name cannot be seen or read read-

ily by prospective and intending purchasers thereof. Defendant denies that he has, or the defendants Podlesak have, in any manner failed or neglected to keep or perform the terms and conditions of the contracts between plaintiff and the Podlesaks on his or their part, and alleges that they have faithfully kept and performed said contracts on their part; and denies that he, either alone, or with his brother Henry Joseph Podlesak, has conspired or confederated with the defendant corporations or either of them to cheat or defraud the plaintiff in any manner or out of any right or thing whatsoever; and denies that this defendant has ever acted, or now acts, in confederation or conspiracy with said defendant corporations, or with the defendant Henry Joseph Podlesak, for any object or purpose whatsoever in any manner having to do with plaintiff; and further defendant says he is without knowledge of the remaining allegations of subdivision XVII of said bill of complaint.

24. Defendant says that he is without knowledge of the allegations of paragraph XVIII of said bill of complaint.

25. Answering subdivision XIX of said bill of complaint, defendant admits on information that the defendant Sumter Electrical Company has been and is now engaged, among other things, in a business similar to that conducted by, and in competition with, plaintiff. Defendant is without knowledge as to the business of the defendant Splitdorf Electric

Company. In the matter of the alleged infringement of 212 letters patent No. 1,101,156 or of reissue No. 13,878, defendant admits that on or about July 31, 1915, this defendant was advised that plaintiff claimed that said defendant corporation was infringing reissue patent No. 13,878, and was requested by plaintiff and by its attorneys to subscribe to a bill of complaint against said Sumter Electrical Company because thereof, in an action to be instituted against said Company in the District Court of the United States for the Eastern District of South Carolina; that defendant had no opportunity to, and did not, examine and compare said devices, but executed said bill of complaint upon request of and in sole reliance upon the opinion of the counsel for the plaintiff, an expert patent attorney and solicitor, who prepared said bill, and believing the facts to be as therein stated, and in pursuance of the second paragraph of the contract Exhibit D between plaintiff and the defendant Podlesaks; and defendant alleges that he is, excepting as hereinbefore stated, without other knowledge as to the fact of infringement of

said patents or either of them. Further answering, defendant says that he is without knowledge of the remaining allegations of said subdivision XIX.

26. Answering subdivision XX of said bill of complaint, defendant denies that he called, or in any manner caused to be called, to plaintiff's attention the alleged fact that said defendant corporations or either of them had infringed or were infringing any of the Podlesak patents, and denies that he, either in person or through the defendant Henry Joseph Podlesak, urged or insisted that plaintiff institute action against the defendant Sumter Electrical Company, and alleges that he had no knowledge that plaintiff had said, or any, Sumter suit in contemplation until he received a letter from plaintiff's solicitor enclosing the bill of complaint, 213 with an urgent request that he sign and verify said bill and return it to plaintiff's solicitor without delay; denies that said action was instituted or prosecuted at any suggestion, request or demand whatsoever from or on the part of this defendant; and denies that the attorneys to whom plaintiff returned said bill were the attorneys of the defendants Podlesak in fact, and alleges that said attorneys were not hired or employed by the defendants Podlesak in said action, but were hired and employed solely by said plaintiff by virtue of its authority under said contract Exhibit D. Denies that he approved or consented to his joinder in said bill any farther than he deemed himself bound to be joined at plaintiff's election under Exhibit B. That as to the remaining allegations of said subdivision XX of said bill of complaint, defendant says he is without knowledge.

27. Answering subdivision XXI of said bill of complaint, defendant denies that he advised or acquainted the Sumter Electrical Company or the Splitdorf Electric Company, or any other person whatsoever, of the fact that the plaintiff's bill of complaint was in preparation; and denies that he informed either said corporations or any person whatsoever that said action, or any action whatever, was in contemplation or would be, or had been instituted; and alleges that this defendant did not in any manner, either directly or indirectly, approach or communicate with said corporations or with either of them, or with any officer, agent or employee of said corporation, or with any person whatsoever, other than plaintiff's secretary and plaintiff's attorney or solicitor, about said suit; and denies that he did in any manner connive or con-

spire with said Splitdorf Electrical Company or Sumter Electrical Company, or with any person, firm or corporation whatsoever, to violate any rights of said plaintiff under any contracts whatever, or otherwise, or for any other purpose whatever.

214 28. Defendant admits the execution and delivery, on September 4, 1915, of the assignment and contract marked Exhibit F, and termed the "Splitdorf Contract" in the complaint, between the defendants Podlesak and the defendant corporations, and admits that the copy attached to plaintiff's bill of complaint is substantially correct, barring typographical errors, and excepting that on the first page of said copy, Exhibit F, letters patent No. "947,647" is erroneously numbered "949,647", and that near the bottom of page 96 of said bill of complaint, and between the word "applications" and the words "said agreements" the word "or" is erroneously written "on". Defendant denies that he entered into any fraudulent or corrupt arrangement or conspiracy with the defendant corporations; denies that said contract Exhibit F was or is a pretense, and admits and alleges that under and by said contract Exhibit F this defendant did sell and assign to the defendant corporations all that said contract specifies by its terms; admits the receipt by the defendants Podlesak of the first payments, aggregating the sum of \$25,000, and as to the remaining allegations, denies that said contract was executed by the defendants Podlesak pursuant to, or as a part or parcel of, any fraudulent arrangement or conspiracy, and denies that said contract Exhibit F was executed pursuant to any conspiracy or for any ulterior purpose whatsoever, or for any purpose or to accomplish any aim or object or to grant any rights other or different from what said contract Exhibit F contains and purports to grant on its face; and alleges that said contract was made in entire good faith; that if, as claimed in the complaint, said defendant corporations, or either, have made, or are attempting to make any wrongful or improper use of said contract, it is without the knowledge, consent or approval of this defendant; and as to the remaining allegations of subdivision 215 sion XXI of said bill of complaint not herein specifically answered, defendant alleges that he is without knowledge. Defendant denies that the contract Exhibit F is susceptible of any different construction from what said contract

contains on the face thereof, and in that behalf submits said contract to the court.

29. Answering subdivision XXIII of said bill of complaint, this defendant alleges that long prior to November 2, 1908, the date of the contract, Plaintiff's Exhibit A, the defendants Podlesak had established a good reputation in the comparatively limited field of the manufacture and use of the appliances embraced within the early Podlesak inventions; that the defendant Henry Joseph Podlesak was never in plaintiff's employ, and that he conducted his experiments subsequent to plaintiff's employment upon his own account and invented other valuable improvements in said devices; that defendant was discharged by plaintiff on May 14, 1915, and released from all further duty under his contract of March 3, 1913, defendant's Exhibit 3; that thereafter the defendants Podlesak set about preparing to manufacture the devices mentioned in contract plaintiff's Exhibit D, under the reservation therein contained (See Bill, p. 85), had secured promises of orders and were preparing to make deliveries on or about November 1, 1915; that while said preparations were going on, and on or about August 20th, 1915, the defendants Podlesak were approached by the defendant corporations and requested to name a price and to give an option upon the Podlesak patents and their rights under the contracts, plaintiff's Exhibits C, D and E, which they did, and which finally resulted in the contract of September 4, 1915, between the defendants Podlesak and the defendant corporations, Exhibit F of plaintiff's complaint. Defendant denies that the Podlesaks had no good will connected with

that field or business, and denies that the only good will
216 this answering defendant has was in connection with the plaintiff's business, denies that it was or is the purport or intent of the Splitdorf contract, Plaintiff's Exhibit F, to convey or to attempt to convey to the defendant corporations any part of the good will of plaintiff's business, or its right to use and apply the name "Podlesak" to the product of plaintiff manufactured or sold under the Podlesak patents.

That, as this defendant is informed and verily believes, it was and is the intent of the contract, Plaintiff's Exhibit F to convey to the defendant corporations the benefit only of such reputation as each defendant Podlesak had acquired in the field covered by said patents, dissociated from the plaintiff,

and which they could lawfully convey, and said defendant corporations could lawfully acquire, as well as the benefit of the business the defendants Podlesak were about to prosecute, together with the right in said defendant corporations to use the name "Podlesak" in connection with said business to the same extent each the defendants Podlesak could use his own name in said business had said contract Exhibit F not been made; and subject to all the rights which the plaintiff may have under the contracts Exhibits C, D and E.

And, in this behalf, defendant alleges, that the only right acquired by the plaintiff in or to the name "Podlesak" was and is to annex the surname of the inventors to the magnetos themselves in connection with the word "Patented", as provided in the contracts Plaintiff's Exhibits C and D, pages 79 and 86 of plaintiff's bill of complaint, to which reference is hereby made. That neither he nor his brother Henry Joseph Podlesak have in any manner granted to plaintiff an exclusive right to the use of the name "Podlesak" in connection with plaintiff's business, or the field covered thereby, or any rights other or different from the right to affix said name to the devices specified in Exhibits C and D embodying the 217 Podlesak inventions therein specified.

That, as this defendant is informed and verily believes, and claims and charges the fact to be, he never parted with his right to use the name "Podlesak" in connection with the manufacture and sale of the devices specified in the contracts Exhibits C and D, or in any business in which this defendant might thereafter engage in competition with the devices manufactured and sold by plaintiff under the contract Plaintiff's Exhibit C; and that he could lawfully sell the right to the use of his name in connection with his right to manufacture and sell under the contract Plaintiff's Exhibit D, or under any other inventions he has made not embodied in the contracts C, D and E, or might make and perfect after the termination of his employment with said plaintiff.

Further answering said plaintiff's claim to the right to use the name "Podlesak", defendant alleges that said plaintiff has never acquired any right thereto by use or otherwise, that plaintiff has never advertised any of the devices, parts of or accessories thereto under the name "Podlesak", other than to have said name appear on cuts and electrotypes illustrating said device about where said name formerly appeared on the magneto itself, and has only on one occasion referred in its

printed matter to the fact that the magneto or any part thereof was manufactured under the Podlesak patents; but on the contrary, has always advertised and sold it as the "Milton", "Milton Improved", "Webster Milton"; "Webster Tri-Polar Oscillator" or the "Webster Magneto"; that the names "Milton" and "Webster" have always been the only names used and advertised in connection therewith; that since the 14th of May, 1915, when this defendant, as herein-after more fully shown, was without just cause discharged from his employment with plaintiff, the plaintiff, falsely and with intent to injure this defendant, advertised to the 218 trade that defendant was no longer connected with plaintiff, has cut the name "Podlesak" off its cuts and electrotypes illustrating said magneto where said name had previously been displayed, and, has caused the name "Podlesak" to be removed from the top part of the magnetos themselves, where it had theretofore at all times been prominently displayed and could be readily seen, to an obscure place on the side near the bottom, where it would not be noticed by a prospective purchaser unless searched for specially. Defendant denies that the use of the name "Podlesak" by said defendant corporations upon any product said defendant corporations are authorized lawfully to manufacture or sell under or by virtue of the Splitdorf contract, was or is calculated to mislead or deceive, or would mislead or deceive intending purchasers into believing that the product of said defendant corporations is the product of said plaintiff, or that said "Splitdorf contract" can, or is calculated to, furnish said defendant corporations any ground or pretense to claim that said defendants have acquired any portion of the good will claimed by the plaintiff in the name "Podlesak" or of the plaintiff's business; and denies that the effect of said Splitdorf contract, Plaintiff's Exhibit F, is, or is intended to be, to enable said defendant corporations to appropriate any part of plaintiff's good will or of the public demand for plaintiff's said product.

Defendant admits that plaintiff's product has acquired an extensive and valuable reputation; denies that the reputation which plaintiff's product has acquired was built up by plaintiff, and alleges the fact to be that the reputation of the Podlesak inventions and the reputation of said Podlesaks in said field was established by the defendants Podlesak prior to the time they entered into business relations with plaintiff;

and denies that plaintiff has expended any large sums
219 of money in building up its business under said Podlesak patents or the "Podlesak" name, and alleges that the large sums expended by plaintiff were in an unsuccessful attempt to perfect other magnetos and internal combustion engine ignition devices than those covered by the Podlesak patents.

Defendant denies that, either alone or with Henry J. Podlesak or in any other manner, he has infringed, or aided, abetted or encouraged the defendant corporations in any infringement or threatened infringement of the Podlesak patents or of plaintiff's rights thereunder, in the Eastern Division of the Northern District, or anywhere else, or in the alleged purpose of said defendant corporations unfairly to compete with plaintiff; and denies that he has in any manner threatened, or agreed, or proposes in any manner in the future, or otherwise, to infringe, or to aid, abet, encourage or assist said defendant corporations in any infringement or infraction of plaintiff's rights, or in any unfair competition with plaintiff. As to the remaining allegations of subdivision XXIII of said bill of complaint, defendant alleges that he is without knowledge.

30. Defendant admits full knowledge of the contracts Exhibits C, D and E; denies that the "Splitdorf contract", Exhibit F, was or is a breach of any contract between defendant and plaintiff, or in violation of any rights of said plaintiff; denies that defendant is in any respect a trustee for plaintiff; denies that said defendant corporations became successors in or under any trust whatever; and denying the existence or creation of the trust alleged, denies that this defendant has betrayed or proven unfaithful to any alleged trust, or that this defendant has betrayed any trust; and alleges that defendant is without knowledge of the remaining
allegations of subdivision XXIV of said bill of complaint.

220 31. Defendant denies that he was or is without right, power or authority to grant the rights granted under the contract Exhibit F; and alleges that he is without knowledge of the allegations of fact contained in subdivisions XXV and XXVI. Answering subdivision XXVII of said bill, defendant admits that Williams and Bradbury and Lynn A. Williams have handled plaintiff's patent matters, business and litigation, and were plaintiff's solicitors and counsel named in the bill of complaint signed by defendant in plain-

tiff's suit against the Sumter Electrical Company; and as to the remaining allegations of subdivision XXVII of said bill of complaint, this defendant is without knowledge.

32. Answering that portion of subdivision XXVIII which pertains to this defendant, defendant alleges that the contracts Exhibits C, D and E, provide and require only what is stated and agreed in said contracts and nothing else, and denies that said contracts or any of them were or now are susceptible of any different meaning, and submits said contracts to the court. Defendant admits that there is an account now due for the quarterly period ending September 30, 1915, in which this defendant has an interest for that portion of said period expiring September 4, 1915. Defendant denies that it was or is a part of any fraudulent arrangement or conspiracy between the defendants Podlesak and the defendant corporations that the defendant companies shall examine plaintiff's books, directly or indirectly through the Podlesaks or an agent or attorney designated by them; denies the existence of any arrangement, combination or conspiracy whatsoever; denies any intention or desire to make use of any information which may be contained in the royalty report in which this defendant is interested or to disclose any such information to any of the defendant corporations; denies that the plaintiff will be obliged to make default under said contracts, and as to the remaining allegations of said subdivision XXVIII this defendant alleges that he is without knowledge.

221 3. Answering subdivision XXIV, defendant denies that he has planned or has any intention, either alone or in connection with the defendant corporations, to defeat any litigation which may be instituted by plaintiff to protect its rights under the Podlesak patents; denies that he has any intention of preventing or attempting to prevent plaintiff from instituting or maintaining such litigation; admits that under the license contracts, Exhibits C and D, plaintiff has the right to use the names of said Podlesaks if so desired, in such litigation, within the limits therein prescribed, so long as plaintiff is not in default under said contracts; and in further answer as to the extent of plaintiff's rights in the premises, defendant submits said contracts C, D and E to the court; and as to the remaining allegations of said subdivision XXIX, defendant alleges that he is without knowledge.

34. Answering subdivision XXX, defendant admits that

plaintiff's business has not heretofore been profitable and has sustained considerable losses which have been made good by loans to plaintiff by certain of plaintiff's stockholders; denies that any such losses have been incurred in the development of plaintiff's business under said Podlesak patents. Admits that plaintiff's business has been more profitable during the first five months of the present year; and as to the remainder of said year 1915, defendant is without knowledge; admits that during the time this answering defendant was employed by plaintiff, he has been paid for his services, up to June 1, 1915, and in that behalf alleges that he in every instance rendered full value therefor; admits that payments have heretofore been made to the defendants Podlesak by way of royalties under said license agreements, but denies that plaintiff has paid all royalties now due the Podlesaks; admits that during the month of May, 1915, he ceased to be employed by the plaintiff; and in this behalf alleges that instead of his resignation being accepted, as alleged, he was
222 discharged from such employment without just cause;

denies that he has ever boasted that he would bring about injury or distress to plaintiff, or that he would be reinstated as an employee of plaintiff under different management, or that he would bring plaintiff into such condition that it would be obliged to sell out and turned over its business to some competitors; but on the contrary, defendant alleges that after his employment with said plaintiff was terminated as aforesaid, he refused offers of employment from other concerns in the same business as plaintiff; that he has not been in any employment by any of plaintiff's competitors; and that this defendant has never by word or act, in any form or manner, said or done anything whatsoever which would injure in any degree the business of the plaintiff. Said defendant denies the existence of any plans in which this defendant is in any manner involved, and denies all knowledge of any plans, and denies that he has entered into any arrangement whatsoever with Henry Joseph Podlesak or with the defendant corporations, or with any other person whatsoever, to carry out any plans to ruin plaintiff's business; and denies specifically that he ever had any such idea in mind.

Further answering, defendant says that he is without knowledge as to the remaining allegations of subdivision XXX of said bill of complaint as amended, not hereinbefore specifically answered.

35. Answering subdivision XXXI, defendant, denying such

infringement and unfair competition, denies that he is prepared or ready to continue any alleged infringement or unfair competition against the plaintiff; and denies that said plaintiff will suffer any injury whatever at the hands of this defendant; and as to the remaining allegations of said subdivision XXXI, this defendant says he is without knowledge:

36. And answering generally said complaint, this defendant alleges that the contract Exhibit F, termed the "Split-dorf Contract", was made between the defendant Podlesak on the one hand and the defendant corporations on the other, in entire good faith in so far as the defendants Podlesak were and are concerned, and in full recognition of and subject to the rights of the plaintiff under the license contracts, Exhibits C, D and E, set out in said bill of complaint; that said contract was not solicited or requested by the defendants Podlesak; that in the making of said contract, this defendant sold his rights under said patents and in the contracts, Exhibits C, D and E, to said defendant corporations, as he deemed and now deems he had and has a perfect right to do; that this defendant has not since September 4, 1915, been in any manner interested in the magneto business, has not in any manner colluded, combined or conspired with the defendants, or any of them or with any other person, firm or corporation whatsoever, to in any manner prejudice or injure the rights of the plaintiff, either under said Podlesak patents or under the license agreements between the Podlesaks and said plaintiff applicable thereto, or otherwise, and in this connection, said defendant alleges that in all matters he has faithfully kept and performed all and singular the obligations between him and the plaintiff, existing and growing out of the relationship which existed between the parties, and has not in any manner used or attempted to use any knowledge which this defendant may have acquired of or concerning plaintiff's business, methods, plans, trade, customers or any other breach or aspect thereof, and has not divulged or attempted to divulge to any of the defendant corporations or to any other person whatsoever any knowledge or information gained by this defendant while he was in the employ of said plaintiff.

37. Defendant denies that plaintiff has been injured by or at the hands of this defendant in the sum of Three Thousand Dollars (\$3000) or any other sum; and denies that the value of said plaintiff's rights in so far as this defendant is 224 concerned in said action is equal to or in excess of said sum of Three Thousand Dollars (\$3000); and denies that

in so far as this defendant is concerned, the plaintiff's remedy is only in equity, but on the contrary alleges that if said plaintiff has any cause of action against this defendant, its remedy is at law, and that, as hereinbefore shown, no cause of action against this defendant, either at law or in equity, has been stated or alleged in said bill of complaint.

38. Further answering, this defendant denies each and all of the numerous conclusions of law set out in said bill of complaint as amended which have not been specifically controverted herein.

39. And this defendant, having fully answered to the said bill of complaint in so far as he is advised the same is material or necessary to be answered unto, denies that the plaintiff is entitled to the relief, or any part thereof, in the Bill of Complaint prayed for, or any relief whatsoever; and prays the same advantage of his aforesaid answer as if he had set up by motion the several matters and things aforesaid where a motion would have been proper; all of which matters and things this defendant is ready and willing to aver, maintain, and prove, as this Honorable Court may direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) TESLA EMIL PODLESAK

THOMPSON, MYERS & O'KEARNEY,
Solicitors for said defendant.

(Signed) WILLIAM D. THOMPSON,
Of Counsel.

225 State of Wisconsin }
Racine County } ss.

TESLA EMIL PODLESAK, being first duly sworn, on oath deposes and says, that he is the defendant of that name mentioned in the bill of complaint and in his answer in the foregoing entitled action; that he has read the above and foregoing answer signed and subscribed to by him and known the contents thereof, and that the same is true of his own knowledge, excepting the matters therein stated on his information and belief, and as to those matters he believes it to be true.

(signed) TESLA EMIL PODLESAK.

Subscribed and sworn to before me this 2nd day of December, A. D. 1915.

(signed) LULU M. LUNN
Notary Public, Wis.

My commission expires March 3, 1918.

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DEFENDANT'S EXHIBIT 1.

Hertz Electrical Co.
1075-1111 East 15th Street
Chicago

T.K.W.—LK

August 10, 1909

Mr. Emil Podlesak,
Chicago, Ill.

Dear Sir:—

In consideration of your giving us your entire time and your best services in the interests of our Company, we agree to employ you, at the rate of \$125.00 per month.

Your duties will be of various character, but chiefly in designing attachments for the Milton Magneto to attach it to stationary gas and gasoline engines and also as consulting electrician.

It is understood that should the business demand it, you are perfectly willing to go, on our call, to whatever point it is necessary to develop the business.

It is also understood that if in the development of the magneto there should be improvements that are valuable to the Hertz Electric Co. and they consider it desirable to patent them, that such improvements shall be assigned to the Hertz Electric Co. without further consideration other than the present royalties which you now enjoy on the magneto.

Regarding other inventions or improvements which you may make other than pertain to the Magneto will say that if such improvements or inventions should seem to be of value to the Hertz Electric Co. and they desire to manufacture them you are to offer first to the Hertz Electric Co. certain exclusive privileges which may be granted by patents obtained, outside the shop rights which we may legally enjoy.

Yours very truly,

HERTZ ELECTRIC CO.

By T. K. WEBSTER,

Pres.

Accepted Aug 10-09

EMIL PODLESAK.

DEFENDANT'S EXHIBIT 2.

May 10, 1910.

Mr. Emil Podlesak,
Tiffin, Ohio.

Dear Sir:—

For and in consideration of your giving us your entire time in the interest of the manufacture, development and sale of magnetos, we agree to give you a salary of \$1,800, (Eighteen Hundred Dollars) per year, payable in twelve monthly installments of \$150.00 each.

Your position will be that of the Head of the Experimental Department, with the expectation that you may be called upon at times to enter the sales department, as the emergency may require.

Your home shall be in Tiffin, Ohio, and in case you are called elsewhere your expenses will be paid by the company.

We further agree that if you can develop a magneto for use on automobiles, which can be made at a cost which will insure its commercial success, because of any qualities which it may possess, we will pay you, beyond the regular compensation of \$1,800.00, 10% of the net profits for three years dating from the time that the machine is accepted by this company as practical and ready to put on automobiles.

These net profits are to be figured as follows: Say that the cost of the material is \$6.00, and the labor \$3.00, making \$9.00, to this shall be added for operating expenses 20%, making the cost of the magneto for material and labor and operating expenses, \$10.80. To this sum shall be added a further 10%, which shall cover all other expense such as depreciation in plant, interest on investment, &c. This would add a still further cost of \$1.08, making the cost of the magneto, under considerations named above, \$11.88.

To further illustrate, we may suppose that we sold this magneto for \$18.88. This would show a net profit to the Company of \$7.00 and under the Agreement we would pay you, as royalty, or profit, 70 cents (\$0.70) on each machine.

The above proposition is based on the theory that you are able to get patent protection on the United States of America.

At the end of the three year period mentioned above, should the Webster Electric Co. desire to still continue the use of the patents secured by you they will pay you, as a royalty, 5% of the net profits as described above.

Should you not be able to secure Letters Patent, but should develop a machine which we might desire to manufacture we will pay you 5% of the net profits as figured in the foregoing illustration, for a period of three years.

It is further agreed that the cost of the taking out of patents shall be borne by the Webster Electric Co. and prosecuted under your advice and direction.

In the matter of magnetos other than those to be used for automobile purposes we will pay the same royalty and be governed entirely by the existing agreement between us and Henry J. Podlesak et al.

228 We agree to use your designs to the exclusion of all others wherever they may be applied, and in case of our deciding to manufacture some type of machine not covered by the above agreement, and to discontinue the manufacture of your designs or any of them, then all rights therein shall revert to you.

The royalties shall apply to new designs and also to radical improvements in existing designs, and shall be payable quarterly, and the non-payment of such royalties, within sixty days of the expiration of each quarter, shall, on thirty days notice in writing, make this agreement null and void.

The quarterly periods shall be considered as beginning on the first day of each January, April, July and September.

Very truly yours,

WEBSTER ELECTRIC CO.

*Signed by T. K. Webster, Pres. Subject to
the approval by the Board of Directors.*

Accepted,

EMIL PODLESAK.

Memorandum of Agreement made and entered into this 3rd day of March, 1913, by and between The Webster Electric Company, a corporation organized and existing under and by virtue of the laws of the State of West Virginia, party of the first part, and Emil Podlesak, of the City of Racine, State of Wisconsin, party of the second part, Witnesseth:—

Whereas, the said Emil Podlesak is now in the employ of The Webster Electric Company, and, whereas, The Webster Electric Company is desirous of securing for its benefit and

use such improvements in ignition apparatus as said Emil Podlesak may from time to time develop,

Now, Therefore, the parties hereto, in consideration of One Dollar (\$1.00) by each to the other in hand paid, the receipt of which is hereby acknowledged, and for other good and valuable considerations, agree with each other as follows:

(1) The said Emil Podlesak will engage himself to the party of the first part, and the party of the first part hereby engages the said party of the second part as superintendent of its factory for a period of three consecutive years commencing on the first day of January, 1913, on the following terms and conditions:—

(a) The said Podlesak shall receive for the first eleven months of said employment the sum of Two Hundred Ninety-One Dollars (\$291.00) per month; and for the twelve month the sum of Two Hundred Ninety-nine Dollars (\$299.00); and for the following eleven months the sum of Three Hundred Thirty-three Dollars (\$333.00) per month; and for the next succeeding month, being the twenty-fourth month of this term, the sum of Three Hundred Thirty-seven Dollars (\$337.00).

(b) Beginning the twenty-fifth month up to and 230 including the last month of said term of three years, the said party of the second part shall receive the sum of Three Hundred Seventy-five Dollars (\$375.00) per month.

(2) The office designation of the said Emil Podlesak shall be that of "Work's Manager," or such other name as may be suitable and he shall have entire and complete charge of the manufacturing, experimental and production departments of the business of the party of the first part. He shall be responsible directly to the Board of Directors in the discharge of his duties, and shall be guided by its instructions.

(3) Should the said Emil Podlesak obtain any letters patent or rights to letters patent covering any new and useful improvements made during the term of his contract by him in the adaptation, application or construction of the ignition magneto now manufactured by The Webster Electric Company, or should the said Emil Podlesak during the term of this contract make any new and useful improvements in the adaptation, application or construction of the ignition magneto now manufactured by said company, the letters patent, rights to letters patent, patents and applications therefore, obtained and applied for in the United States of America and Foreign countries shall forthwith be assigned to The Webster

Electric Company, to be the sole and absolute property of said Company.

In Witness Whereof, the said The Webster Electric Company has caused this instrument to be signed by its vice-president and its corporate seal thereunto affixed, attested by its secretary, and the party of the second part has hereunto set his hand and seal the day and year first above written.

(Corporate Seal of
The Webster Electric
Company, West Virginia.)

THE WEBSTER ELECTRIC COMPANY
By S. W. LOEB,
Its Vice-President.

Attest:

EMIL PODLESAK,
Secretary.

EMIL PODLESAK, (Seal)

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DEFENDANT'S EXHIBIT 4.

Contract Plaintiff's Exhibits of Bill of Com- plaint.	Inventor	Date of Application	Serial No.	Date of Is- sue of Patent
		Original 9/25/1901	Original 76,559	
Ex. C.	Podlesak			
" "	Bros.	(1/28/1908)	Div. 477,251)	Jan. 25, 1910
" "	" "	(1/28/1908)	Div. 413,069)	Feb. 8, 1910
" "	" "	(1/28/1909)	Div. 413,068)	Sep. 19, 1911
" D	H. J. Podlesak	2/17/1909	478,355	Apr. 9, 1912
" "	T. E. "	4/15/1912	690,921	Mar. 4, 1913
" "	" "	12/23/1914	878,726	Feb. 9, 1915
" "	Podlesak			
" "	Bros.	9/25/1901	Org. 76,559	Mar. 18, 1913
" "	T. E. Podlesak	7/21/1911	639,738	May 26, 1914
" "	" "	12/27/1911	668,153	June 2, 1914
" "	" "	11/29/1912	734,143	June 30, 1914

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Patent
Number

Description of Device.

947,647	(Inductor Generator for Ignition Purposes. Tri-Polar Mag- (neto made by Webster Co.
948,483	(Induction Generator for Ignition Purposes (Magneto, Engine & Spark. Mech. Combustion)
1,003,649	(Inductor Generator for Ignition Purposes. (Magneto Structure).
1,022,642	Low Tension Spark. Mech. for Gas Engines. (Spark Plug Detail.)
1,055,076	Current Generator & Ignition for Internal Combust. Engine (Spark Plug and Bracket Com.
Re- Issue 13,878	Reissue of the above Pat. 1,055,076.
1,056,390	Inductor Generator for Ignition Purposes. (Bi-polar Magneto not made by Webster Co.)
1,008,052	Magneto Machine. (Magneto Details & (Structure).
1,008,754	Inductor Alternator. (Magneto Structure-Details)
1,101,956	Ignition Device for Explosive Engines. (Starting Lever. The above are divisional applications based on and of original application No. 76,559, filed Sept. 25, 1901.

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AMENDMENT TO ANSWER.

F

(Filed February 2, 1916.)

The defendants, Sumter Electrical Company and the Splitdorf Electric Company, leave of Court having first been obtained, amend their joint and several answer in the above entitled action as follows:

Insert after paragraph 32 of said Answer, the following:

"(32-a) These defendants further allege that subsequent to the issuance of the original patent No. 1,055,076 to Emil Podlesak, to-wit: on March 4, 1913, of which the said patent No. 13,878 is a Re-issue, and prior to the date upon which application for said Re-issue was filed, to-wit: December 23, 1914, one of these defendant corporations, to-wit: Sumter Electrical Company, manufactured and sold, in the ordinary and usual course of business, plug oscillators, the manufacture and sale of which plaintiff charges is an infringement of said Re-issued Letters Patents, and which said manufacture and sale, commencing between the dates aforesaid, has been continued up to the time of the commencement of this suit; and these defendants further allege that between the dates aforesaid, the Sumter Electrical Company expended large sums of money in the preparation for the said manufacture and sale of the plug oscillators aforesaid, and that between the dates aforesaid application for Letters Patent of the United States was made by H. R. Van Deventer, as inventor, covering the said plug oscillators so manufactured and sold, and which invention and application therefor was duly assigned to the said Sumter Electrical Company; and these defendants, upon information and belief, further allege that the plaintiff, Webster Electric Company, had knowledge of the said manufacture and sale by the Sumter Electrical Company between the dates aforesaid, as alleged, and these defendants further allege that the said Re-issue Letters Patent were applied for and caused to be issued to the said Emil Podlesak with the intent and purpose of obtaining claims in the said Re-issue, not embodied in the said original Letters Patent, and which would dominate and cover the said apparatus so manufactured and sold by the defend-

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Interrogatories.

ant, Sumter Electrical Company, between the dates afore-said."

SUMTER ELECTRICAL COMPANY,
SPLITDORF ELECTRIC COMPANY,
Defendants,
By CHAS. C. BULKLEY
DAVID B. GANN
GEORGE H. PEAKS,
Their Solicitors.

CHAS. C. BULKLEY
DAVID B. GANN
GEORGE H. PEAKS
Solrs. for said defendants.

* . * . * . *

INTERROGATORIES.

(Filed February 2, 1916.)

Interrogatories to be answered under oath by the officer or agent of the plaintiff corporation designated by the Court or Judge thereof, under the provisions of Rule 58 of the Rules of Practice for the Courts of Equity of the United States, promulgated by the Supreme Court of the United States:

(1) Upon which of the several patents set up in the Bill of Complaint as amended does the plaintiff base its claim of infringement?

(2) Upon which claim or claims of plaintiff's patents, charged to be infringed, does the plaintiff base its claim of infringement?

(3) Describe and illustrate in detail the structure made and sold by defendants, charged as an infringement?

(4) Upon what act or acts of the defendant or of the several defendants does the plaintiff base its claim of infringement? (Answer to be fully and in detail.)

236 (5) When and where did such alleged acts or act of infringement occur?

(6) When did the plaintiff first learn of the infringement charged, and how and from whom?

(7) If your answer or answers to either or all of the foregoing interrogatories refer to, or are based wholly or in part upon any instrument or other writing, document or

record, attach a copy of such instrument, wiring, document or record, indicating the portion thereof referred to.

SUMTER ELECTRICAL COMPANY
SPLITDORF ELECTRIC COMPANY

Defendants

By CHAS. C. BULKLEY

DAVID B. GANN

GEORGE H. PEAKS

Their Solicitors.

CHAS. C. BULKLEY

DAVID B. GANN

GEORGE H. PEAKS

Solicitors for said Defendants.

237 ANSWERS OF S. A. LOEB, SECRETARY OF THE
WEBSTER ELECTRIC COMPANY, PLAINTIFF,
TO THE INTERROGATORIES HERETOFORE
FILED BY THE CORPORATION DEFENDANTS.

FILE
1

(Filed February 18, 1916)

State of Wisconsin }
County of Racine } ss:

S. A. LOEB, being first duly sworn, deposes and says that he is the Secretary of the Webster Electric Company, plaintiff, and in answer to the interrogatories heretofore filed herein by the corporation defendants says as follows:

Interrogatory No. 1. Upon which of the several patents set up in the Bill of Complaint as amended does the plaintiff base its claim of Infringement?

Answer. Past infringement of Letters Patent No. 1,101,956 and Reissue Letters Patent 13,878, and threatened infringement of these and the remaining patents in suit.

Interrogatory No. 2. Upon which claim or claims of plaintiff's patents, charged to be infringed, does the plaintiff base its claim of infringement?

Answer. As to the defendants' past infringing acts 238 so far as the plaintiff is informed thereon on Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of patent No. 1,101,956, and Claims 13, 14, 15, 19, 20, 21, 22, 23, and 24 of Reissue Patent No. 13,878.

Interrogatory No. 3. Describe and illustrate in detail the

structure made and sold by defendants, charged as an infringement?

Answer. In ignition apparatus made, used, and sold by the defendants and comprising a block or body arranged to be fitted into an aperture in the wall of an internal combustion engine. Carried by and mounted in said block or body are relatively fixed and movable electrodes. Formed integral with the block or body aforesaid is a laterally extending shelf upon which is mounted an electric current generator consisting of stationary field magnets and a rotor movable with respect to the field magnets. Means in the form of two relatively strong springs normally retain the generator rotor in a certain or pre-determined position. Fixed with respect to the rotor or oscillatory part of the mechanism is an arm adapted to be engaged by an engine driven actuating device and by the latter to be moved to a certain position and there released, whereupon the springs before mentioned quickly move the oscillatory part of the mechanism toward normal position and operate the current generator to produce an ignition current. Fixed with respect to the arm last mentioned is a second arm which serves to actuate the movable electrodes when the oscillatory part of the mechanism is moved by the springs, as before explained. The movable electrode has fixed with respect thereto an arm provided with an adjustable screw arranged to be struck to separate the electrodes. Associated with the movable electrode is a spring of less tension than the springs which normally tend to hold the oscillatory part of the mechanism in normal position. The spring associated with the movable electrode tends to keep the fixed and movable electrodes in engagement one with the other, and 239 also tends to move the arm on the movable electrode toward that arm on the oscillatory part of the mechanism which in the operation of the mechanism strikes the electrode arm to effect the separation of the electrodes.

In connection with some, if not all, of the infringing apparatus heretofore made, used, and sold by the defendants is a so-called starting lever arranged to be fulcrumed on a stationary part of the apparatus and arranged when actuated to move the oscillatory part of the mechanism against the action of the springs associated therewith and then to release the rotor in a manner similar to that in which the rotor is arranged to be actuated and released by the engine driven actuating device.

One form of the apparatus charged as an infringement is

the so-called "Sumter Plugoscillator" illustrated in the attached pamphlet. The apparatus shown in the pamphlet is provided with all of the features previously referred to in the present answer. The pamphlet mentioned has been marked for identification "Exhibit A—Plaintiff's Answers to Defendants' Interrogatories".

Interrogatory No. 4. Upon what act or acts of the defendant or of the several defendants does the plaintiff base its claim of infringement? (Answer to be given fully and in detail.)

Answer. The making, assembling, using, and selling of apparatus embodying all or some of the features of construction described in the answer to Interrogatory No. 3, some of which apparatus has been sold under the name "Sumter Plugoscillator", and the aiding and encouraging of said acts.

Interrogatory No. 5. When and where did such alleged acts or act of infringement occur?

Answer. In Chicago, Cook County, Illinois; Sumter, South Carolina; and divers other places in the United States since the dates on which said patents were granted and both prior to and since the commencement of this suit.

240 Interrogatory No. 6. When did the plaintiff first learn of the infringement charged, and how and from whom?

Answer. Shortly after the grant of the reissue patent No. 13,878 plaintiff was informed that the defendant, Sumter Electrical Company was infringing, or was about to infringe, said patent, and suit was brought against said Sumter Electrical Company promptly after sufficient information of its infringement was acquired. Shortly after the institution of the suit aforesaid the plaintiff learned that reissue patent No. 13,878 and patent No. 1,101,956 were being infringed by all of the defendants. All of this information was acquired by the plaintiff through the usual channels afforded by the trade and from the defendants herein.

Interrogatory No. 7. If your answer or answers to either or all of the foregoing interrogatories refer to, or are based wholly or in part upon any instrument or other writing, document or record, attach a copy of such instrument, writing document or record, indicating the portion thereof referred to.

Answer. The pamphlet referred to in the answer to Interrogatory No. 3 has been attached hereto and properly identified.

S. A. LOEB.

174 *Amendment to Answer of Splitdorf Electrical Co.*

Subscribed and sworn to before me this 17 day of February, A. D. 1916.

JAMES N. BAUR
Notary Public.

241 AMENDMENT TO ANSWER OF SPLITDORF ELECTRICAL COMPANY, ONE OF THE DEFENDANTS IN THE ABOVE ENTITLED SUIT.

(Filed May 22, 1916)

Comes now the defendant, Splitdorf Electrical Company, and by leave of court first had and obtained, amends its answer heretofore filed as the joint and several answer of this, defendant and the Sumter Electrical Company, defendant, as heretofore amended, and also by way of setting forth and alleging material supplemental matter as follows:

Insert after Paragraph 32-a, heretofore added to the said answer by amendment, the following:

“(32-b) (1) This defendant further shows that on, to-wit: February 1, 1916, the defendant, Sumter Electrical Company, did, for a valuable consideration, in writing, sell, assign, transfer and set-over unto this defendant, its successors and assigns, all the right, title and interest of the said Sumter Electrical Company in and to the Letters Patent hereinbefore mentioned and referred to, including all claims or rights of whatsoever kind or nature arising out of past infringements of said Letters Patent, or any of them, to the full end of the terms of the said Letters Patent and of the Letters Patent which might be issued thereafter, for any reason,—and all re-issues, divisions, renewals or extensions thereof,—and that all such assignment was filed for record in the Patent Office of the United States on, to-wit: the 15th day of March, 1916, which said assignment, duly executed by the said defendant, Sumter Electrical Company, as aforesaid, this defendant stands ready to produce upon the hearing hereof or as it may be directed by this Honorable Court to do.”

“By virtue of said assignment, this defendant has succeeded to, and become the sole owner of, all right, title and interest of the said Sumter Electrical Company in the said Letters Patent, and contracts with reference thereto, heretofore enjoyed by this defendant and said Sumter Electrical Company jointly.”

“(2) That, as more fully appears by and from the license

agreement entered into between the two defendants Podlesak and the plaintiff,—a copy of which is attached to the Bill of Complaint as Exhibit 'D' thereto,—it was provided, among other things, that the said defendants, Podlesaks, did agree to and with the plaintiff that they, and each of them, would aid and assist each other in the prosecution of the applications therein referred to, and the obtaining of patents thereunder,

and in any interference proceeding relating to their right
242 of priority to said inventions, and any suit or proceeding brought under any of the said patents, or for the infringement of any patents, by reason of the manufacture, use or sale by the plaintiff of the inventions described in said patents or applications; provided, however, that said defendants Podlesak should not be called upon to pay out or expend any money in any suit or proceeding relating to the said inventions; and the said defendants Podlesak, moreover, did in and by said agreement appoint the attorney for the plaintiff (meaning Lynn A. Williams, Esq., the counsel for the plaintiff at that time and in this suit) as the agent and attorney of them, the said defendants Podlesak, for certain purposes, as will more fully appear by reference to said Exhibit 'D' to the Bill of Complaint, to which reference is hereby made."

"And this defendant says that the said Letters Patent and applications were the same as hereinbefore mentioned and involved herein, and which are the subject matter of this suit, and all right, title and interest of the said defendants Podlesak in which, and each and all thereof, has passed to this defendant by virtue of the contracts between the defendants Podlesak and this defendant and said Sumter Electrical Company, jointly, and by reason of the succession in interest of this defendant to all interest of the said Sumter Electrical Company, defendant, as aforesaid."

"And this defendant says that by reason of the premises the said plaintiff has become and is bound to aid and assist this defendant as the successor in interest of the said defendants Podlesak with respect to the matters and things aforesaid, and in and about any interference proceedings in the United States Patent Office or elsewhere, and in equity and good conscience ought so to do."

"But this defendant avers that, notwithstanding the privacy and interest of its express covenants and the obligations thereof aforesaid, and in violation thereof, the said plaintiff has, since the filing of the original Bill of Complaint herein, failed and refused to aid and assist this plaintiff with re-

spect to the matters and things aforesaid, in the following particulars, among others, to-wit:—

“That it appears from the complaint herein that on February 9, 1915, a certain Re-issue Letters Patent No. 13878 was granted to Emil Tesla Podlesak for an improvement in Current Generators and Igniters for Internal Combustion Engines, which contained, among others, claims designated as claims 13, 14, 15, 19, 20, 211, 22, 23, 24; that it appears from the complaint herein, and from the answers to the interrogatories of the defendant by the plaintiff, that the defendant is charged with the infringement of the said Re-Issue Patent in respect of the claims as hereinbefore set forth and no others, and said complaint alleges that said claim are valid to the patentee, Emil Tesla Podlesak, and in full force and effect;”

“That on the 2d day of February, 1910, one Edmund Joseph Kane filed in the United States Patent Office a certain application for United States Letters Patent for improvement in Electric Igniters for Explosive Engines, Serial No. 541428; that, as this defendant is informed and believes, the said Kane was, prior to, at the time of, and subsequent to the 243 filing of the said application, in the employ of the plaintiff, and that the said Kane offered to sell to the plaintiff herein the invention described and illustrated in said application, and also any patent or patents which might be granted thereon; that after said application had been pending in the Patent Office for about five years, to-wit: on the 14th day of January, 1915, the said Kane filed a divisional application of said original application, in which he embodied the identical claims of the Podlesak Re-Issue Patent involved herein and hereinbefore set forth; that on the 29th day of October, 1915, the United States Patent Office declared an interference, No. 39181, between the said divisional application of Kane and the said Re-Issue Patent of Podlesak, in which the counts of the issue involved are the claims as hereinbefore enumerated; that thereupon the said Podlesak, the patentee, moved to dissolve the said interference in accordance with the rules of practice of the Patent Office in such cases made and provided, on the ground, among others, that neither the original application of said Kane, nor his divisional application illustrated and described any invention, structure or subject matter which was covered, embodied in or described by the said claims as aforesaid, contained in the said Re-Issue Patent of the said Podlesak, and that, therefore, the said Kane had no right to make such

claims in his application, nor to prosecute an interference to determine priority of invention thereon; that said question involved upon such motion to dissolve is still pending in and undetermined by the Patent Office;"

"That on the 4th day of May, 1916, the plaintiff, by an assignment in writing, duly recorded in the United States Patent Office, became the owner of the entire right, title and interest in and to the said divisional and original applications of the said Kane and of any and all inventions described and illustrated and claimed, or which might be claimed, therein."

"Defendant further alleges that at or about the time of acquiring the entire right, title and interest aforesaid, as defendant is informed and verily believes, one Lynn A. Williams, as attorney for, and in behalf of, the plaintiff, instructed or directed the attorneys for the said Kane divisional application to move the Patent Office to advance the hearing before the Patent Office on the motion to dissolve the same made in behalf of Podlesak; and defendant alleges, upon information and belief, that the plaintiff proposes to and will, through its attorney, prosecute said interference in the Patent Office in behalf of the said Kane application, with the end and purpose in view of obtaining a judgment by the Patent Office that the said Kane was the first, sole and original inventor of the subject matter set forth in the claims hereinbefore recited, and that the said claims contained in the said Podlesak Re-Issue Patent are void and of no force and effect."

"That the said divisional application of Kane, filed January 14, 1915, now owned by the plaintiff, after due action, was, on May 24, 1915, placed in interference with the patent of Milton, No. 1096048, of May 12, 1914, then and now owned by the plaintiff, which said interference is now pending and as yet undecided by the Patent Office."

"That the said Kane divisional application, which was placed in interference with said Podlesak Re-Issue Patent, was held by the Patent Office to date back to the prior application of said Kane, filed February 2, 1910, which is still pending in the Patent Office and stands under rejection, and which contained no claims like those in interference with the said Milton or the said Podlesak. Such prior application having been held by the Patent Office to disclose the subject matter of the Podlesak claims, the question as to whether
244 Kane really was the original, first and sole inventor of the subject matter of the invention in controversy between

the parties in the Patent Office is not open to attack by the party Podlesak in the Patent Office,—since it appears from a preliminary statement of said Podlesak, filed by him in accordance with the rules of the Patent Office, that he, the said Podlesak, did not make said invention prior to the date of the filing of said application by the said Kane; that, therefore, on the record dates of the respective applications, judgment of priority in favor of Kane has been rendered by the Examiner of Interference, the first tribunal of the Patent Office to pass upon interference questions from which decision appeal has been taken, and such appeal is now pending before the Board of Examiners in Chief of the Patent Office; that under the practice of the Patent Office, and in view of the ruling of the Patent Office that the original application of Edmund Joseph Kane, which was filed February 2, 1910, Serial No. 541426, discloses the subject matter of the divisional application of Kane, which is in interference with both Podlesak and Milton, the only question open to Podlesak before the various tribunals of the Patent Office is the right of Kane to make the interfering claims, and defendant further alleges that the Patent Office has ruled that if the Kane-Milton interference be finally decided in favor of Milton, the decision in favor of Kane in the Kane-Podlesak interference shall be set aside; that during the proceedings in the Patent Office, after the Milton-Kane interference was declared, and while the attorneys for Kane were seeking to have his application placed in interference with the Podlesak Re-Issue Patent, one of the grounds for the hastening of the interference between Kane and Podlesak and delaying the Milton-Kane interference was that the parties in connection with the Milton and Podlesak patents were identical,—that is, they were both by the plaintiff, the Webster Electric Company—that is, that at that time the point was made by Kane that he, as a single party, was conducting, or about to conduct, a contest in two different interferences against two parties whose interests were identical,—the Milton patent being actually owned by the Webster Electric Company and the Podlesak patent being jointly controlled by the Webster Electric Company and the Splitdorf Electrical Company.”

“That on May 4, 1916, as hereinbefore set forth, there was filed for record in the United States Patent Office an assignment of the full right, title and interest in the Kane application, both parent and divisional, to the plaintiff herein. It,

therefore, appears that the Milton-Kane interference is now pending between two nominal parties whose interests are owned by the same assignee (the Webster Electric Company), and that the Kane-Podlesak interference is now in substantially the same category—the Podlesak patent being one in which the Webster Electric Company is jointly interested with the Splitdorf Electrical Company.”

“It is, therefore, alleged by this defendant that the Milton patent, being owned by the plaintiff herein, and the Kane application also being owned by said plaintiff, it is impossible for the defendants herein to preserve their rights in connection with the Podlesak-Kane interference, and that, in the nature of things, the plaintiff owing both the Milton patent and the Kane application, can so adjust matters that while their rights be fully preserved, the ruling of the Patent Office to the effect that if priority of invention in the Milton-Kane interference be finally awarded to Milton, Podlesak can move to set aside any judgment that might be rendered in favor of Kane and the interference Kane v. Podlesak will be of no effect, as the parties can so manipulate the Milton-Kane interference as that Podlesak would not receive any benefits 245 that would otherwise accrue from a judgment of priority in favor of Milton in the Milton-Kane interference.”

“Further, this defendant is informed and believes that the attorneys for said Kane prosecuting the interference proceeding in the United States Patent Office aforesaid, are so doing at present under the advice and direction of Lynn A. Williams, Esq., of counsel for plaintiff herein, and for the benefit of and on behalf of said plaintiff.”

“And this defendant, therefore, prays that the plaintiff, its privies, agents and attorneys, be enjoined and restrained by a decree of this court, and by an interlocutory order pending the entry of such decree, from directly or indirectly asserting or claiming in the Patent Office, or elsewhere, any matter, thing or cause whatsoever inconsistent with, or in derogation of, the validity of said Podlesak inventions, applications and patents.”

“And this defendant further prays that as to any interest or right which the said plaintiff may have or shall hereafter acquire, in and to the asserted or claimed invention and application of said Kane, or any right or interest the said plaintiff has acquired, or may hereafter acquire, in and to any invention or application, or patent, inconsistent with, or in deroga-

tion of, the validity of the patents, inventions or applications aforesaid of the said Podlesaks, and of this defendant as their successor in interest, that the said plaintiff may be held and decreed to have acquired the same in performance of its agreement, covenant and obligation aforesaid, and for the benefit and advantage of this defendant as well as itself; and for such other and further relief in the premises as may be deemed just and equitable."

The answer of the plaintiff under oath to the matters and things set forth in the foregoing amendment, and all thereof, is hereby expressly waived.

SPLITDORF ELECTRICAL COMPANY

By CARLOS W. CURTIS

Its General Manager.

CHARLES C. BULKLEY

DAVID B. GANN

GEORGE H. PEAKS

Solicitors for said Defendant, Splitdorf Electrical Company, and of counsel.

May 9, 1916.

* * * *

12. 246 PLAINTIFF'S ANSWER TO THE AMENDMENT IN THE NATURE OF A CROSS BILL TO THE ANSWER OF DEFENDANT SPLITDORF ELECTRICAL COMPANY.

(Filed June 12, 1916)

Plaintiff for answer to the amendment filed on or about May 22, 1916, to the answer of Splitdorf Electrical Company says:

1. Plaintiff has no knowledge concerning the matters averred in subdivision (32-B) (1) in the first and second paragraphs thereof, and, therefore, calls on defendant for strict proof thereof.

2. Plaintiff submits for the interpretation and decision of the Court the agreement "Exhibit D" attached to the Bill of Complaint, and so far as the averments in subdivision (32-B) (2), first paragraph thereof, may be in conflict with the provisions of said agreement plaintiff denies the same.

3. Referring to subdivision (32-B) (2), second paragraph thereof, plaintiff admits that the patents and applications re-

ferred to in said contract "Exhibit D" form part of the subject matter of this suit, but plaintiff denies, on information and belief, that all right, title, and interest of the defendants Podlesak in said patents has passed to defendant Splitdorf Electrical Company.

4. Referring to subdivision (32-B) (2), paragraphs 3 and 4 thereof, plaintiff denies that in any manner whatsoever or by reason of any agreement or fact whatsoever it ever became or is bound in any way to assist the defendants Podlesak or the Splitdorf Electrical Company in any interference proceedings in the United States Patent Office or otherwise; and, therefore, denies that it has ever at any time violated any covenant or obligation to Splitdorf Electrical Company as averred in said paragraphs, or otherwise.

5. Plaintiff admits the matters averred in subdivision (32-B) (2) paragraph 5 thereof.

6. Plaintiff admits the matters averred in subdivision (32-b) (2), paragraphs 6, 7, and 8 thereof, except that it denies that said Edmund Joseph Kane offered to sell the plaintiff the invention set forth in said application and any patents which might be granted thereon until some months subsequent to the filing of the Bill of Complaint herein, and also denies that it has prosecuted said Kane application, or otherwise acted, with the purpose of obtaining any judgment that the said claims of the Podlesak reissue patent are void and of no force and effect. Plaintiff says that some time subsequent to the filing of the Bill of Complaint herein its officers learned that said Kane had filed an application in the United States Patent Office by which he claimed to be the prior inventor of the invention set forth in Claims 13, 14, 15, 19, 20, 21, 22, 23 and 24 of said Podlesak reissue patent No. 13,878, and that subsequent to the filing of the Bill of Complaint herein plaintiff was notified on behalf of said Kane that plaintiff was acting at its peril in building machines and devices that might be held to be an infringement of the claims in said Kane applications which he intended to prosecute to the end. Plaintiff immediately caused to be made a thorough investigation of the facts relating to the alleged inventions of said Podlesak and said Kane and as a result of said investigation it was determined that said Podlesak was not the prior inventor of the invention set forth in the above mentioned claims of said reissue patent, Podlesak's title to which was warranted to plaintiff by said contract "Exhibit D", but that said Kane was the true and prior inventor of said invention. Plaintiff there-

upon, on or about May 4, 1916, acquired from said Kane by the payment of many thousands of dollars the entire right, title and interest in and to said original and divisional 248 applications and the inventions set forth therein. Plaintiff says that its counsel herein are in its behalf prosecuting said Kane application in said interference with the Podlesak reissue patent and that the Power of Attorney of said counsel has been filed in and accepted by the Patent Office.

7. Plaintiff admits the matter averred in subdivision (32-B) (2), paragraph 9 thereof, and admits the matters averred in paragraph 10 thereof, except that plaintiff denies that said prior Kane application, filed February 2, 1910, contained no claims like those in interference with said Milton patent or said Podlesak patent and denies that the Patent Office has ruled that if the Kane-Milton Interference be decided in favor of Milton the decision in favor of Kane in the Kane-Podlesak Interference shall be set aside. Plaintiff says that the Commissioner of Patents, in denying a certain petition by Podlesak in the Kane-Podlesak Interference, merely ruled that the denial was without prejudice to Podlesak's right to move to set aside any judgment of priority that might thereafter be rendered in favor of Kane if priority of invention was finally awarded to Milton in the Milton-Kane Interference. Plaintiff says that the Patent Office records in the Milton-Kane Interference and in the Podlesak-Kane Interference disclose, and Podlesak admits, that Podlesak's alleged invention set forth in the above mentioned claims of said reissue patent was not made until long after the Kane application was filed and also long after the application for the Milton patent involved in the Milton-Kane Interference was filed. Plaintiff, therefore, says that the records disclose, and Podlesak admits, that Podlesak is under no circumstances the true and prior inventor of said invention and is entitled to no rights in the same. Plaintiff further says that in the Podlesak-Kane Interference Podlesak is not making and can not make any contention that he was the prior inventor of said invention and that the sole question involved in said interference is whether or not Kane has the right, technically, to make the above mentioned claims of the Podlesak reissue patent. The Law Examiner of the Patent Office has decided 249 that Kane has the right to make these claims and the Examiner of Interferences thereafter awarded priority of invention to Kane. An appeal from the decision of the

Examiner of Interferences has been argued and submitted to the Board of Examiners in Chief and is now pending their decision. Plaintiff, before the submission of said appeal, moved the Board of Examiners in Chief on behalf of Kane to advance the hearing thereof on the ground that this suit for infringement of plaintiff's rights under the Podlesak reissue patent was pending and that plaintiff could not consistently proceed further with this suit until it was determined by the Patent Office whether Kane or Podlesak was the true and prior inventor of the invention set forth in said claims in interference. Plaintiff avers on information and belief that Podlesak is prosecuting and intends to prosecute a series of appeals in the Kane-Podlesak interference in the Patent Office and in the Court of Appeals of the District of Columbia for the purpose of delaying the issuance of a patent to plaintiff for the Kane invention and of thus preventing plaintiff from taking such action in this suit as a final determination of the Kane-Podlesak Interference may make proper.

8. Referring to subdivision (32-B) (2) paragraphs 11, 12 and 13 thereof, plaintiff admits that it owns and controls the Milton patent and the Kane applications involved in the Milton-Kane Interference, but denies that the Kane-Podlesak Interference is in substantially the same category. Plaintiff says that its counsel are openly prosecuting the Kane applications involved in both of said interferences. Plaintiff avers that the defendants Podlesak and said defendant Splitdorf Electrical Company, claiming to be the sole owners of the Podlesak reissue patent, have continuously maintained and now maintain that plaintiff has no right to take any action whatever with respect to said Podlesak reissue patent in said Kane-Podlesak Interference, and plaintiff has had no authority in the Patent Office to take any action with respect to said Podlesak reissue patent and has taken no such action.

Plaintiff denies that it can in any way whatsoever ad-
250 just matters in the Milton-Kane Interference as to in any way affect the Podlesak-Kane Interference and says that the Milton-Kane Interference can only be determined according to the true facts occurring some years ago and over which plaintiff had and has no control. Plaintiff further says that any judgment in the Milton-Kane Interference, whichever of said parties may thereby be determined to be the prior inventor, can give no right whatsoever to Podlesak in the Podlesak-Kane Interference or otherwise, because Podlesak has admitted that both Kane and Milton invented the de-

VICES disclosed respectively in the Milton patent and the Kane applications long prior to Podlesak's alleged invention.

9. Plaintiff therefore denies that defendant Splitdorf Electrical Company is entitled to the relief prayed for in subdivision (32-B) (2) paragraphs 14 and 15 thereof, of its amendment to the answer or to any other relief whatsoever; and plaintiff therefore prays that the amendment to the answer set forth in subdivision (32-B) (1) and (2) be dismissed at defendants' costs.

WEBSTER ELECTRIC COMPANY,

By LYNN A. WILLIAMS

WILLIAMS, BRADBURY & SEE

LEVINSON, BECKER, CLEVELAND &
SCHWARTZ

Plaintiff's Counsel

* * * * *

5. 251 ORIGINAL BILL IN THE NATURE OF A SUPPLEMENTAL BILL

(Filed October 25, 1918.)

To the Honorable Judges of the District Court of the United States in and for the Northern District of Illinois, Eastern Division, in Chancery Sitting:

Webster Electric Company, a corporation organized, chartered, and existing under and by virtue of the laws of the State of Wisconsin, having its principal place of business at Racine, in the County of Racine and State of Wisconsin, and a citizen of the State of Wisconsin (hereinafter called Webster Electric Company of Wisconsin), brings this its original Bill in the nature of a Supplemental Bill, against Henry Joseph Podlesak, residing at Chicago, Illinois, a citizen of Illinois and a resident of the Eastern Division of the northern District of Illinois, Tesla Emil Podlesak, residing at Racine, Wisconsin, a citizen of Wisconsin have a regular and established place of business at Chicago, Illinois, within the 252 Eastern Division of the Northern District of Illinois, within which division and district he has committed acts of infringement of plaintiff's patents hereinafter complained of, Sumter Electrical Company, a corporation organized, chartered and existing under and by virtue of the laws of the

State of South Carolina, and Splitdorf Electric Company, a corporation organized, chartered and existing under and by virtue of the laws of the State of New Jersey, both of which said corporations have regularly established places for doing business and duly appointed authorized agents or officers located in the City of Chicago, State of Illinois, in this division and district, within which district and division both of said corporations have committed acts of infringement of plaintiff's patents hereinafter complained of, and complains and shows:

I.

That therefore, on or about the 12th day of October, 1915, Webster Electric Company, a corporation organized, chartered and existing under and by virtue of the laws of the State of West Virginia, having its principal place of business at Racine, in the County of Racine and State of Wisconsin and a citizen of the State of West Virginia (hereinafter called Webster Electric Company of West Virginia), brought and duly filed its original Bill of Complaint in this Honorable Court against each and all of the aforesaid defendants, Equity No. 553, in which said Webster Electric Company of West Virginia complained and showed and alleged certain matters and things, which are more fully and particularly set forth in the said original Bill of Complaint of the said Webster Electric Company of West Virginia, and all of which said complaints, showings and allegations are adopted and accepted by your orator and made a part hereof, and complained of, shown and alleged by your orator as fully and to the same extent and in the same manner and for the same purpose as though repeated, reiterated, and incorporated herein in extenso, and in which said Webster Electric Company of West Virginia prayed for certain relief, which prayer for relief is adopted and accepted by your orator and made a part hereof, and 253 prayed for by your orator as fully and to the same extent and in the same manner and for the same purpose as though repeated, reiterated and incorporated herein in extenso, reference to the said original Bill being hereby made and reliance upon the said original Bill being hereby had the same as if the matter alleged and prayed for in the said original Bill were set forth herein in full.

II.

And your orator further shows to your Honors that said above-named defendants were duly served with process or subpoena in said suit; that in due course all of the said defendants appeared and put in and filed their answers; that on or about the 18th day of November, 1915, Webster Electric Company of West Virginia, plaintiff in the aforesaid suit, by leave of court granted on or about the 11th day of November, 1915, amended its Bill of Complaint; that on or about the second day of February, 1916, the aforesaid defendants Sumter Electrical Company and Splitdorf Electric Company filed an amendment to their joint and several answer theretofore filed; that on or about the second day of February, 1916, the said defendants Sumter Electrical Company and Splitdorf Electric Company filed certain interrogatories to be answered under oath by an officer or agent of the then plaintiff corporation; that on or about the 17th day of February, 1916, the then plaintiff, Webster Electric Company of West Virginia, filed the answers under oath of S. A. Loeb, then Secretary of the said Webster Electric Company of West Virginia to the aforesaid interrogatories; that on or about the 22nd day of May, 1916, the aforesaid defendant Splitdorf Electric Company, by leave of court first had and obtained, amended its answer theretofore filed as the joint and several answer of the said defendant Splitdorf Electric Company and the aforesaid Sumter Electrical Company, which said amendment comprised in part a counter-claim against the aforesaid Webster Electric Company of West Virginia, and in which amended answer, and following and pursuant to the aforesaid counter-claim the said Splitdorf Electric Company, defendant, 254 prayed in substance that the aforesaid Webster Electric Company of West Virginia be enjoined and restrained from asserting any matter or cause inconsistent with or in derogation of the supremacy of the "Podlesak inventions, applications and patents" which constituted a part of the subject matter of the aforesaid suit and the pleadings therein, and in which said amended answer, and following and pursuant to the aforesaid counterclaim, the said Splitdorf Electric Company prayed in substance that any interest or right which the aforesaid Webster Electric Company of West Virginia might have or hereafter acquire in or to certain inventions and applications of one Edward Joseph Kane, particularly in and to an application for United States Letters Pat-

ent serial No. 2,097, filed on the 14th day of January, 1915, might be held and decreed to have been acquired by the said Webster Electric Company of West Virginia for the benefit and advantage of the said Splitdorf Electric Company; that on or about the 12th day of June, 1916, the said Webster Electric Company of West Virginia filed its answer to the amended answer of the said Splitdorf Electric Company containing the aforesaid counter-claim and prayer for affirmative relief; and that various other pleadings have been had in the aforesaid suit, and that various and sundry papers, documents, and exhibits have been filed with the Clerk of the Court and now form parts of the record of the proceedings had in and about the aforesaid suit, all of which said pleadings, papers, documents, and exhibits your orator hereby shows and alleges as constituting the proceedings heretofore had in the aforesaid suit, as fully as though they were set out and restated in extenso herein, and reference to all of which said pleadings, papers, documents and exhibits filed and of record in the aforesaid suit is hereby made, the same as if the same were set forth herein in full.

III.

And your orator further shows unto your Honors that on or about the 12th day of March, 1918, the said Webster Electric Company of West Virginia, in consideration of the sum of One Dollar and other good and valuable consideration, by a written instrument dated the 12th day of March, 1918, 255 which said instrument was duly filed for record and recorded in the United States Patent Office on or about the first day of July, 1918, bargained, sold, granted, transferred, assigned and conveyed unto your orator, the said Webster Electric Company of Wisconsin, all the property, property rights, business and assets belonging to the said Webster Electric Company of West Virginia, or in which the said Webster Electric Company of West Virginia was interested, including all its copyrights, trade rights, trade names, patents, patent rights, devices and inventions of every kind and character owned by or in which the said Webster Electric Company of West Virginia had any interest whatsoever, and including any and all interest in or to and any or all benefits and any and all claims and rights of action past or future arising out of any and all of the following contracts, among others, to-wit:

A "License Agreement between Webster Electric Company of West Virginia and Emil Podlesak and Henry Joseph Podlesak, dated February 5, 1914, relating to United States Letters Patent numbered 947,647, 948,483 and 1,003,649;

A "License Agreement (Shopright)" between Webster Electric Company of West Virginia and Emil Podlesak and Henry Joseph Podlesak, dated February 5, 1914, relating to United States Letters Patent numbered 1,022,642, 1,055,076 (reissue No. 13,878), 1,056,360, and pending applications for United States Letters Patent serial No. 734,143 (since issued as patent No. 1,101,956), serial No. 668,153 (since issued as patent No. 1,098,754) and serial No. 639,738 (since issued as patent No. 1,098,052);

A "Supplemental Agreement" between Webster Electric Company of West Virginia and Emil Podlesak and Henry Joseph Podlesak, dated January 20, 1915, relating to United States Letters Patent No. 947,647, 948,483, 1,003,649, 1,022,642, 1,055,076 (reissue No. 13,878) 1,056,360, 1,101,956, 1,098,052, and 1,098,754;

each and all of which said agreements are set out in the original Bill of Complaint filed by the said Webster Electric Company of West Virginia against the aforesaid defendants and which said agreements and certain of which said trade rights, trade names, patents, patent rights and inventions, and claims and rights of action, constituted the subject matter of the aforesaid original Bill of Complaint and the aforesaid suit of the said Webster Electric Company of West Virginia against the aforesaid defendants, and in and by the same instrument bargained, sold, granted, transferred, assigned and conveyed unto your orator, the said Webster Electric Company of Wisconsin, all iron, steel, copper, magnetos, goods, wares, merchandise, furniture, fixtures, machinery, raw materials of all kinds, materials and goods in process of manufacture, patterns, tools, and equipment; also all causes of action, claims, rights, and demands, either in law or in equity; also all orders on hand and all contracts entered into by the said Webster Electric Company of West Virginia and relating to the business theretofore carried on by the said Webster Electric Company of West Virginia; and also all real estate and buildings owned by the said Webster Electric Company of West Virginia and located in the City of Racine, State of Wisconsin, or elsewhere, together with all other property, property rights, and assets, tangible or intangible, of every kind, nature and description whatsoever and wherever located, in-

cluding the good will of the business theretofore carried on by the said Webster Electric Company of West Virginia, the said Webster Electric Company of West Virginia intending to and thereby transferring to the said Webster Electric Company of Wisconsin and vesting in the said Webster Electric Company of Wisconsin the legal ownership of the entire assets of the said Webster Electric Company of West Virginia, the said bargain, sale, grant, transfer, assignment and conveyance from the said Webster Electric Company of West Virginia to the said Webster Electric Company of Wisconsin being subject to any and all obligations arising from any contracts hereinabove mentioned, all of which said contracts the said Webster Electric Company of Wisconsin did thereby assume and agree to perform, and being subject also to all liens, encumbrances, debts and liabilities, direct, contingent and otherwise, against the said Webster Electric Company of West Virginia, either then in existence or which might at any time thereafter be asserted against said Webster Electric Company of West Virginia, all of which said liens, encumbrances, debts and liabilities the said Electric Company 257 of Wisconsin, then and there assumed and thereby agreed to pay and discharge;

Whereby the said Webster Electric Company of Wisconsin acquired all of the right, title and interest which the said Webster Electric Company of West Virginia had theretofore had, in all of the complaints, claims, demands, and remedies of the said Webster Electric Company of West Virginia, as alleged and prayed for in the aforesaid original Bill of Complaint filed by the said Webster Electric Company of West Virginia and the amendment thereto, and assumed and became liable for all of the obligations admitted by it in the pleadings or proceedings in or about the aforesaid suit, and to the same extent as was the said Webster Electric Company of West Virginia, but no further, the said Webster Electric Company of Wisconsin assumed and became liable for the obligations and claims and demands asserted against the said Webster Electric Company of West Virginia in and by the pleadings in the aforesaid suit of the said Webster Electric Company of West Virginia against the aforesaid defendants.

IV.

And your orator further shows unto your Honors that on or about the 12th day of March, 1918, the said Webster Electric Company of West Virginia, in consideration of One Dollar to it paid, and for other good and valuable consideration,

by a written instrument dated the 12th day of March, 1918, which said instrument was duly filed for record and recorded in the United States Patent Office on or about the 28th day of March, 1918, sold, assigned and transferred unto your orator, the said Webster Electric Company of Wisconsin, the whole right, title and interest in and to the invention disclosed in the application for United States Letters Patent for an improvement in Electric Igniters, filed by Edmund Joseph Kane January 14, 1915, serial No. 2097, together with all the rights and privileges under the Letters Patent that might be granted therefor, and the Commissioner of Patents was in and by said written instrument authorized and requested to issue the said patent to the said Webster Electric Company of Wisconsin; and

258 That on the 24th day of September, 1918, United States Letters Patent No. 1,280,105 were granted by the Commissioner of Patents to the said Webster Electric Company of Wisconsin, upon and as the result of the aforesaid application of Edmund Joseph Kane, filed January 14, 1915, serial No. 2097; and

That the said Webster Electric Company of Wisconsin is now possessed of the whole right, title and interest in and to the aforesaid Letters Patent No. 1,280,105, granted September 24, 1918.

V.

And your orator further shows unto your Honors that on or about the 31st day of May, 1918, by due and lawful proceedings had, the said Webster Electric Company of West Virginia was duly dissolved, its charter canceled or revoked, and its corporate existence ended.

VI.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true and direct answer make to the allegations of the bill, but not under oath, an answer under oath being expressly waived, your orator prays that the plaintiff, Webster Electric Company of Wisconsin, may be substituted for and stand in the place of the said Webster Electric Company of West Virginia, the plaintiff in the aforesaid original suit, and that it may have the benefit of said suit and of the orders and proceedings therein, and that this its bill be taken as sup-

plemental to said original bill, and that the plaintiff be granted the relief prayed for in said original bill in all respects as though the original bill had been filed by this plaintiff, reference to which said original bill is hereby made the same as though the same had been set forth herein in full, and the prayer for relief in which is hereby reiterated herein in full, and for such other and further additional relief as to the court may seem just and proper in the premises.

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VII.

And your orator further shows unto your Honors that the defendants Splitdorf Electric Company and Sumter Electrical Company, having filed their joint and several answer herein to the bill of complaint of the said Webster Electric Company of West Virginia on or about the 14th of December, 1915, and the defendant Splitdorf Electric Company having, on or about the 22nd day of May, 1916, filed an amendment to its answer, which said amendment was in the nature of a cross bill or counter claim wherein, as appears more fully from said amended answer in the nature of a cross bill or counter claim, to which reference is hereby made, and which said answer set forth in detail that said Webster Electric Company of West Virginia, after the filing of its bill of complaint herein, had become the owner of a certain application for United States Letters Patent filed by Edmund Joseph Kane, Serial No. 2097, then pending before the Commissioner of Patents, and prayed in substance that said Webster Electric Company of West Virginia be decreed to hold said patent application, or any patent that might issue as a result thereof, in trust and for the benefit of the defendant Splitdorf Electric Company; and the said Webster Electric Company of West Virginia having filed on or about June 12, 1916 its answer to the amended answer of the said Splitdorf Electric Company in the nature of a cross bill or counter claim, and the aforesaid United States Letters Patent No. 1,280,105 having resulted from the aforesaid application of the said Edmund Joseph Kane and having issued to the said Webster Electric Company of Wisconsin on or about September 24, 1918, and since the filing of said answer of the said Webster Electric Company of West Virginia to the said answer of the said Splitdorf Electric Company in the nature of a cross bill or counter claim, your orator, the Webster Electric Company of Wisconsin, prepared a supplemental answer to said answer to the amended answer of said Splitdorf Electric Company in the nature of a cross bill or counter claim, which supplemental

answer the said Webster Electric Company of Wisconsin, upon notice and motion duly made, prayed leave of this court to file herein on the 18th day of October, 1918, but the court, upon the objection of the solicitors for the defendant Splitdorf Electric Company, refused to allow your orator to file such supplemental answer, but entered an order granting leave to your orator to include in this its original bill in the nature of a supplemental bill the allegations and prayer for relief contained and set forth in the said supplemental answer. Wherefore, your orator now shows in this its original bill in the nature of a supplemental bill the following facts:—

VIII.

That the interference No. 39,013 which was declared on or about August 24, 1915 between the divisional application of Kane filed January 14, 1915, Serial No. 2097 and Patent No. 1,096,048 of May 12, 1914 to John Lewis Milton was duly prosecuted in the United States Patent Office and before the Commissioner of Patents; that full and complete proofs were taken on behalf of both parties to the said interference No. 39,013, which proofs were duly filed in the United States Patent Office, whereupon a hearing before the Examiner of Interferences of the United States Patent Office was had upon said proofs, and whereupon, on or about the 30th day of March, 1917, the said Examiner of Interferences rendered and entered judgment awarding priority of invention of the subject matter in issue in the said interference to Edmund Joseph Kane.

IX.

That interference No. 39,181, which was declared by the United States Patent Office on the 29th day of October, 1915 between the divisional application of Kane, Serial No. 2097, filed January 14, 1915, and reissue patent No. 13,878 to Podlesak, was duly prosecuted in the United States Patent Office both before and from and after May 22, 1916 by the attorneys for the Webster Electric Company of Wisconsin and by the attorneys for the Webster Electric Company of West Virginia, the predecessor of the Webster Electric Company of Wisconsin, on behalf of Kane, and by attorneys selected and appointed by the defendant Splitdorf Electric Company on behalf of Podlesak.

That the Examiner of Interferences in the United States Patent Office, having awarded priority of invention to Kane,

an appeal was taken on behalf of Podlesak to the Board of Examiners in Chief of the United States Patent Office, before whom a hearing was had, and which Board of Examiners in Chief, in due course, rendered a decision awarding priority of invention of the subject matter of the said interference to Podlesak, whereupon an appeal was taken and had on behalf of Kane to the Commissioner of Patents in person, whereupon a hearing was had before the Commissioner of Patents, and whereupon in due course the Commissioner of Patents, rendered a decision awarding priority of invention of the subject matter of the said interference to Podlesak, whereupon an appeal was taken and had in behalf of Kane to the Court of Appeals of the District of Columbia, whereupon a hearing was had, and whereupon, on or about the 6th day of May, 1918, a decision was rendered by the said Court of Appeals of the District of Columbia, awarding priority of invention as to the claims constituting the issue and subject matter of the said interference to Podlesak, whereupon jurisdiction of the primary examiner of the Patent Office as to the Kane application Serial No. 2097 was restored and resumed, whereupon the said primary examiner rejected in the Kane application Serial No. 2097 each and all of the claims constituting the subject matter or issue of the said interference No. 39,181 between Kane and Podlesak, whereupon such proceedings were had that each and all the claims constituting the subject matter or issue of the said interference No. 39,181 between

Kane and Podlesak were cancelled from the said Kane application, and such that the said Kane application was on

August 27, 1918, formally allowed by the Commissioner of Patents with other and different claims, which claims did not and had not constituted the subject matter or issue of the said interference No. 39,181 between Kane and Podlesak, whereupon such proceedings were had that on September 24, 1918 United States Letters Patent No. 1,280,105 were duly granted and issued by the Commissioner of Patents to the said Webster Electric Company of Wisconsin upon the aforesaid application of Edmund Joseph Kane Serial No. 2097, filed January 14, 1915, as a division of Kane's application Serial No. 541,428 filed February 2, 1910, certain of the claims of the said Kane patent No. 1,280,105 being the claims which had constituted the subject matter or issue of the said interference No. 39,013.

X.

That interference No. 39,013, in which were involved the said Milton patent No. 1,096,048 and the Kane application serial No. 2097, is no longer pending, and that the said interference is and was long since terminated; and

That the said interference No. 39,181, in which were involved certain claims of the Podlesak reissue patent No. 13,878, and certain claims then pending in the Kane application serial No. 2097, is no longer pending; that the said interference is and was long since terminated; and that the claims constituting the issue of the said interference No. 39,181 are and were long since cancelled from the said Kane application serial No. 2097, and that the said Kane application No. 2097 is no longer pending before the Patent Office or the Commissioner of Patents; and the plaintiff denies that it did or could and that it can now or in the future so adjust matters that while the rights of the plaintiff or its predecessor be fully preserved the interference between Kane and Podlesak would be or will be of no effect, and denies that the plaintiff did or could or can now so manipulate the Milton-Kane interference as that Podlesak would not or will not receive any benefits which otherwise should accrue to him or those in privity with him.

263 The plaintiff denies that it has or is now or will in the future assert or claim in the Patent Office or elsewhere any matter, thing or cause whatsoever inconsistent with or in derogation of any patent or other right of the defendants Henry Joseph Podlesak or Tesla Emil Podlesak or either of them, or of any or all of the said defendants or others in privity with the said Podlesaks or either of them; and

The plaintiff denies that as to any interest or right which the said plaintiff may have or shall hereafter acquire in and to the invention or inventions or application or applications for Letters Patent of the said Kane, any such interest or right is or should be held or decreed to have been acquired or held in performance of any agreement, covenant or obligation with or to or for the benefit or advantage of the defendant Splitdorf Electric Company, in whole or in part, or for any of the defendants herein, either in whole or in part; and

The plaintiff denies that as to any right or interest which the plaintiff has acquired or now has or may hereafter acquire in and to any invention or application or patent, any such interest or right is inconsistent with or in derogation of the validity of any of the patents, inventions, or applications of the said Podlesaks or of the defendant Splitdorf Electric

Company or of any of the defendants, and denies that any such right or interest was acquired or is held or should be held by the plaintiff in performance of any agreement, covenant or obligation with or to the defendants or any of them, or for the benefit or advantage of the defendant Splitdorf Electric Company or for any of the defendants, either in whole or in part.

XI.

And your orator further shows unto your Honors that it is informed and believes, and therefore avers, that heretofore and prior to February 2, 1910, Edmund Joseph Kane was the true, original, and first inventor of the invention described and claimed in United States Letters Patent No. 1,280,105, granted September 24, 1918, which was not known or 264 used by others in the United States before his invention or discovery thereof, and was not patented or described in any printed publication in the United States or in any foreign country before his said invention or discovery thereof, nor more than two years prior to his application for said Letters Patent in the United States, and which was not in public use or on sale in the United States for more than two years before his said application, and for which no applications for Letters Patent upon the said invention had been made by the said patentee, his representatives or assigns, in any foreign country more than twelve months prior to his said application in the United States, and which had not been abandoned.

XII.

And your orator further shows unto your Honors that on February 2, 1910 the said Edmund Joseph Kane duly made application for Letters Patent of the United States for said invention, which said application was divided, and on January 14, 1915, the said Edmund Joseph Kane duly filed his divisional application for Letters Patent of the United States for said invention, and by mesne assignments in writing, duly recorded in the United States Patent Office, the said plaintiff Webster Electric Company (of Wisconsin) became possessed of the whole right, title and interest in and to the aforesaid invention, the aforesaid application for Letters Patent of the United States, and any Letters Patent that might issue as a result thereof, whereupon, due proceedings being had, Letters Patent of the United States, dated September 24, 1918, and numbered 1,280,105, were duly issued upon the aforesaid

divisional application, in conformity with law, granting to the said plaintiff, its successors, and assigns, for the term of seventeen years from and after September 24, 1918, the exclusive right to make, use and sell the said invention throughout the United States and territories thereof, and the plaintiff here makes profert of the original grant of said Letters Patent or a duly certified copy thereof.

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XIII.

Your orator further shows unto your Honors that it is informed and believes, and therefore avers, that the defendants have individually and jointly and in cooperation and confederation and conspiracy with one another, produced or caused to be produced and exhibited or offered for sale, and sold or endeavored to sell, and are now exhibiting or offering for sale and endeavoring to sell or threatening to sell, and threatening to manufacture, in the Northern District of Illinois and the Eastern Division thereof, and elsewhere throughout the United States, devices or apparatus embodying the invention covered by and secured to the plaintiff by said Letters Patent No. 1,280,105, and are thereby infringing upon and threatening to infringe upon said Letters Patent and upon the rights of the plaintiff therein, and continue to threaten so to infringe upon said Letters Patent and upon the plaintiff's rights therein, in the Northern District of Illinois and the Eastern Division thereof, and elsewhere throughout the United States without its license or consent, and in defiance of its rights, since the granting and issuing of said Letters Patent and prior to the filing of this supplemental answer and the counter-claim and supplemental bill, whereby the said defendants have profited and are about to profit, and the said plaintiff has been and will be greatly injured by the defendants' infringement and threatened infringement of said Letters Patent and of the plaintiff's rights in respect thereto, and the said infringement and threats of infringement, if not enjoined, will seriously and irreparably injure and damage the plaintiff.

XIV.

Wherefore your orator, expressly waiving answer under oath, prays:

266 (a) For an injunction perpetually enjoining and restraining said defendants and each of them, their agents, officers, employees, and all persons in privity with them or any of them, from directly or indirectly making or caus-

ing to be made, using or causing to be used, selling or causing to be sold, or offering or threatening to manufacture or use or sell, apparatus or devices embodying or containing the inventions, or any of them, set forth in the said Letters Patent No. 1,280,105, or apparatus or devices which when attached, connected or organized in position for use, will result in an organization which embodies the invention of said Letters Patent No. 1,280,105, or which are designed and intended for use in such infringing organization and sold for that purpose, and from in any way infringing upon or violating said Letters Patent or plaintiff's rights therein, or of contributing to such infringement and violation of the plaintiff's rights therein.

(b) For a temporary injunction enjoining and restraining said defendants and each of them, their agents, officers, employees, and all persons in privity with them or any of them, from infringing said Letters Patent as aforesaid, or contributing to such infringement or from consummating, carrying out or further proceeding with any or all such threatened acts of infringement complained of.

(c) For an accounting of profits and damages, and that the damage assessed may be tripled, and for the costs of this suit.

(d) For such other and further relief as to the court may seem just.

And the plaintiff will ever pray.

WEBSTER ELECTRIC COMPANY
By WALTER BROWN

Vice President

WILLIAMS, BRADBURY & SEE
LEVINSON, BECKER, SCHWARTZ & FRANK
Solicitors and Counsel for Plaintiff.

267 State of Wisconsin { ss:
County of Racine }

Walter Brown, being first duly sworn, deposes and says that he is Vice President of the Webster Electric Company, a corporation of Wisconsin, the plaintiff in the above-entitled cause; that he has read the foregoing Original Bill in the Nature of a Supplemental Bill, subscribed by him on behalf of the said Webster Electric Company, the plaintiff therein named, and knows the contents thereof and that the same is true of his own knowledge, except as to such matters as are

stated to be on information and belief, and as to those he believes it to be true.

WALTER BROWN

Subscribed and sworn to before me at Racine, in the County of Racine and State of Wisconsin, this 21st day of October, 1918.

D. PETERSON
Notary Public.

268 ANSWER OF SPLITDORF ELECTRICAL COMPANY

(Filed December 4, 1918)

The defendant, Splitdorf Electrical Company, for answer to the "Original Bill In The Nature Of A Supplemental Bill," filed herein by the plaintiff, says:—

I.

That the defendant, the Splitdorf Electrical Company, in due course filed its answer to the original bill herein; that on the 2nd day of February, 1916, this defendant filed an amendment to its answer theretofore filed; that on or about said 2nd day of February, 1916, the defendant filed certain interrogatories to be answered under oath by an officer of the plaintiff corporation; that on or about the 17th day of February, 1916, the plaintiff, the Webster Electric Company, filed the answers under oath of the Secretary of the said Company to the aforesaid interrogatories; that on or about the 22nd day of May, 1916, the defendant, Splitdorf Electrical Company, again amended its answer; and also that various and sundry other papers, documents, and exhibits have been filed with the Clerk of the Court by the defendant, and now forms part of the record of the proceedings had in and about the aforesaid suit, and the defendant, Splitdorf Electrical Company, hereby adopts and makes a part of this answer all of the allegations of all the answers and amendments thereto heretofore filed by this defendant to all former pleadings filed by the plaintiff, or its predecessor the Webster Electric Company of West Virginia, which former pleadings or allegations are adopted and accepted by the plaintiff and made a part of its instant "Original Bill in the Nature of a Supplemental Bill," and also various and sundry other papers, documents and exhibits filed by this defendant, the Splitdorf Electrical Company, with the Clerk of the Court and forming parts

269 of the record of the proceedings had in and about the aforesaid suit.

II.

The defendant, the Splitdorf Electrical Company, answering the allegations set forth in Paragraphs III, IV, and V, of the complaint, alleges that it has no knowledge or information, except as set forth in the said paragraphs of the complaint, upon which to form any belief as to the truth of the allegations of fact therein set forth, and, therefore, puts the plaintiff upon strict proof thereof.

III.

This defendant denies, upon information and belief, that the said Edmund Joseph Kane was the true, original or first inventor of any new or useful improvement as alleged in said "Original Bill In the Nature of a Supplemental Bill," and denies that said alleged invention was not known or used in this country, or patented or described in any printed publication in this or any foreign country before his alleged invention thereof, or that the same had not at the time of his application for a patent therefor been in public use or on sale for more than two years.

IV.

This defendant further answering says, upon information and belief, and therefore alleges the fact to be, that the said Edmund Joseph Kane was not the original and first inventor or discoverer of the invention purported to be covered by the Letters Patent in suit, or of any material or substantial part thereof, and that the same, or material, or substantial part thereof, had been in public use and on sale in this country prior to said alleged invention, and for more than two years before the application for said Letters Patent in suit, by the following named persons, at the following named places, to-wit:—

Webster Electric Company of Racine, Wisconsin, at Chicago, Illinois, and Tiffin, Ohio;
270 International Harvester Company of Chicago, Illinois, at Milwaukee, Wisconsin, and Chicago, Illinois.

V.

This defendant further answering says that the said Edmund Joseph Kane was not the original and first inventor or discoverer of the invention purported to be covered by the

Letters Patent in suit, or of any material or substantial part thereof, and that the same, or material, or substantial part thereof, had been described and illustrated in printed publications and patents for more than two years prior to the date of filing of the application of the Kane patent in suit, as follows, to-wit:

Letters Patent of the United States, as follows:—

No. 586,479—H. S. Dosh,	July 13, 1897
“ 635,506—R. E. Olds,	Oct. 24, 1899
“ 675,557—W. H. Cotton,	June 4, 1901
“ 754,286—F. Dickinson,	Mar. 8, 1904
“ 773,062—R. & J. Cooper,	Oct. 25, 1904
“ 780,221—J. W. Packard,	Jan. 17, 1905
“ 806,664—W. B. Hayden,	Dec. 5, 1905
“ 811,122—A. R. Bellamy,	Jan. 30, 1906
“ 820,535—G. J. Weber	May 15, 1906
“ 867,696—B. Batkowski,	Oct. 8, 1907
“ 870,954—W. B. Hayden,	Nov. 12, 1907
“ 909,264—L. H. Wattles,	Jan. 12, 1909
“ 916,312—R. Hennig,	Mar. 22, 1909
“ 938,123—J. A. Charter,	Oct. 26, 1909

„ Foreign Patents as follows:—

British Pat. No. 1359 of 1902 to Simms	
“ “ “ 3660 of 1904 to Hennig	
“ “ “ 25148 of 1907	
“ “ “ 18621 of 1908 to Bickerton	
“ “ “ 24838 of Oct. 1909 to Milton	
German “ “ 49236 of Oct. 22, 1889	
“ “ “ 166104 of Jan. 6, 1906	
French “ “ 349829 published Jan. 13, 1905.	

VI.

This defendant further answering says that the said Edmund Joseph Kane was not the original and first inventor or discoverer of the invention purported to be covered by the Letters Patent in suit, or of any material or substantial part thereof, and that the same, or material, or substantial part thereof, had been described and illustrated in printed publications and patents prior to the date of the supposed invention of the said Edmund Joseph Kane, as follows, to-wit:

Letters Patent of the United States, as follows:—

No. 586,479—H. S. Dosh,	July 13, 1897
“ 635,506—R. E. Olds,	Oct. 24, 1899
“ 675,557—W. H. Cotton	June 4, 1901
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“ “ “ 24838 of Oct. 1909 to Milton
German Pat. No. 49236 of Oct. 22, 1889
“ “ “ 166104 of Jan. 6, 1906
French “ “ 349829, published Jan. 13, 1905.

VII.

That as defendant is informed and believes, and therefore alleges the fact to be, the said Edmund Joseph Kane was not the original inventor or discoverer of any material or substantial part of the thing patented in Letters Patent No. 1,280,105 but that the said invention, and every material or substantial part thereof, was invented by one J. Lewis Milton, at Chicago, in the State of Illinois, who now resides at Cleveland, in the State of Ohio, prior to the filing of the application for patent in suit, and prior to any date of invention of the said Kane.

VIII.

That the application of Kane, Serial No. 541,428, filed February 2, 1910, was for a different, separate and independent invention from that described and claimed in and by 272 Claims 2 and 3 of the Kane patent in suit; that on November 14, 1916, a patent, numbered 1,204,573, was granted to the said Kane upon the application aforesaid, none of the

claims of which patent relate to or are in any sense for the alleged invention set forth and described in Claims 2 and 3 of the patent in suit, but did describe a wholly different and independent invention; that it was not until after the grant of the Milton patent on May 12, 1914 (No. 1,096,048) and not until long after the plaintiff, the Webster Electric Company, at Chicago, Illinois, and Tiffin, Ohio, and the International Harvester Company, at Chicago, Illinois, and at Milwaukee, Wisconsin, had introduced the alleged invention as described in Claims 2 and 3 of the patent in suit into extensive public use (to-wit during the year 1909, and continuously thereafter), that any claim or claims for or assertion of right to the subject-matter of the alleged invention described in Claims 2 and 3 was made by the said Kane in any application for letters patent, or otherwise; that the said Kane did not make any claim for or assertion of right to the subject-matter described in Claims 2 and 3 of the patent in suit until October 22, 1914; that prior to the filing of his application, Serial No. 541,428, on February 2, 1910, said Kane had knowledge of the said manufacture and sale upon the market during the year 1909, and continuously thereafter, by the International Harvester Company, and the plaintiff, the Webster Electric Company, of a large number of specimens embodying the subject-matter described in and by Claims 2 and 3 of the patent in suit; and that said Kane also had actual knowledge of the grant and issue of the said Milton patent; wherefore, the said Kane thereby abandoned or forfeited any right to a patent for said alleged invention, described in Claims 2 and 3 of the patent in suit, which he might otherwise have had thereto, and that, therefore, said Claims 2 and 3 of the patent in suit are void and of no force and effect.

That the application of Kane, Serial No. 541,428, filed February 2, 1910, was for a different, separate and independent invention from that described and claimed in and by Claims 7 and 8 of the Kane patent in suit; that on November 14, 1916, a patent, numbered 1,204,573, was granted to the said Kane upon the application aforesaid, none of the claims of which patent relate to or in any sense are for the alleged invention set forth and described in Claims 7 and 8 of the patent in suit, but describe a wholly different and independent invention, and that it was not until long after the grant of the Podlesak original Patent No. 1,055,076 granted March 4, 1913, and after the grant of the Reissue patent thereon, on Feb-

ruary 9, 1915, No. 13,878, and not until long after the plaintiff, the Webster Electric Company, at Chicago, Illinois, and Tiffin, Ohio, and the International Harvester Company at Chicago, Illinois, and Milwaukee, Wisconsin, had introduced the alleged invention described in Claims 7 and 8 of the patent in suit, into extensive public use, (to-wit, during the year 1909, and continuously thereafter), that any claim or claims for or assertion of right to the subject-matter of the alleged invention described in Claims 7 and 8 was made by the said Kane in any application for letters patent, or otherwise; that the said Kane did not make Claims 7 and 8 of the patent in suit until June 17, 1918, and that then said Claims 7 and 8 of the patent in suit were introduced by amendment into the Kane application, Serial No. 2097, filed January 14, 1915, upon which the patent in suit was granted, by Lynn A. Williams, acting as attorney and solicitor for the plaintiff, the Webster Electric Company, which plaintiff then, as defendant is informed and believes, had acquired the title to and ownership of the application of Kane, and which said Lynn A. Williams was the attorney and solicitor who advised the reissue of the original Podlesak Patent No. 1,055,076 granted March 4, 1913, and who prepared, filed, prosecuted, and obtained said Re-274 issue Patent No. 13,878, granted February 9, 1915; that prior to the filing of his application, Serial No. 541,428 on February 2, 1910, said Kane had knowledge of the said Manufacture and sale upon the market during the year 1909, and continuously thereafter, by the International Harvester Company, and the plaintiff, the Webster Electric Company, of a large number of specimens embodying the subject-matter described in and by Claims 7 and 8 of the patent in suit; wherefore, the said Kane thereby abandoned or forfeited any right to said alleged invention which he might otherwise have had thereto, and, therefore, the said Claims 7 and 8 are void and of no force or effect.

X.

Defendant further answering denies that subsequent to and after the decision of the Court of Appeals of the District of Columbia, awarding priority to Podlesak in the Interference No. 39,181, between Kane and Podlesak, as alleged in Paragraph IX of the complaint herein, the Commissioner of Patents allowed to the applicant Kane claims other than those involved in the said interference between Kane and Podlesak, and denies that the claims which were so allowed,—to-wit, Claims 7 and 8—differed from the claims involved in the in-

terference, and denies that said claims so allowed did not constitute and had not constituted the subject-matter or issue of said interference, but on the contrary alleges that said claims so allowed by the Commissioner of Patents in said application of Kane, upon which the patent in suit was granted (to-wit, Claims 7 and 8), subsequent to the termination of the said interference, and after the final judgment therein awarding priority to Podlesak, were substantially the same claims as those which were involved in and constituted the subject-matter or issue of the said interference, and were in fact claims

for the same invention involved in said interference, 275 and which was determined and adjudged to be the invention of Podlesak; wherefore the defendant alleges that the judgment or decision of the Court of Appeals in said interference between Kane and Podlesak, No. 39,181, awarding priority of invention to Podlesak, was and is *res adjudicata* of the right of said Kane to have a patent for the invention described in said Claims 7 and 8, and that therefore the said claims in said Kane patent in suit are void and of no force and effect.

XI.

That the original patent to Podlesak, No. 1,055,076, was granted and issued March 4, 1913, and that application was made by the said Podlesak for a reissue thereof, which Reissue No. 13878 was granted and issued February 9, 1915; that thereupon and on or about April 17, 1917, certain claims of said Podlesak Reissue patent (to-wit, Claims 13, 14, 15, 19, 20, 21, 22, 23 and 24 inclusive), were incorporated by amendment thereto in the application of the patent in suit, filed Jan. 14, 1915, and the defendant makes profert of said Podlesak Reissue patent to which reference may be had for these claims, that thereupon, as alleged in paragraph IX of the complaint, an interference was declared between the said reissue patent to Podlesak and the application of Kane; that, as alleged in said Paragraph IX the party Kane was represented by Lynn A. Williams as attorney and solicitor for the plaintiff, the Webster Electric Company, and by Sturtevant & Mason representing the party Podlesak, having been, as alleged in the complaint, employed for that purpose by the defendant, the Splittorf Electrical Company; that said interference resulted in a judgment of the Court of Appeals of the District of Columbia awarding priority of invention as to the subject-matter of said claims to the said Podlesak, as alleged in said Paragraph IX; that after said judgment or decision, the claims

aforesaid, constituting the subject-matter of the issue in 276 said interference, were cancelled and stricken out of the Kane application, and two claims were incorporated therein by amendment, (to-wit, Claims 7 and 8 of the Kane Patent), on or about the 17th day of June 1918. Defendant alleges that the Commissioner of Patents improperly, and without authority of law, granted the patent to the said Kane for the subject-matter described in Claims 7 and 8 thereof, because said Kane was estopped by his laches from making said claims for said subject-matter, and that, therefore, said claims are void and of no force and effect.

XII.

Defendant denies that on February 2, 1910, the said Edmund Joseph Kane made application for Letters Patent of the United States for the invention disclosed and claimed in the patent in suit; denies that the application upon which the patent in suit was granted was a division or continuation of the said earlier application filed February 2, 1910, Serial No. 541,428; and on the contrary alleges that the application of Kane upon which the patent in suit was granted (Patent No. 1,280,105), was for a different, separate and independent invention from that disclosed, described and claimed in said Kane application Serial No. 541,428, filed February 2, 1910, and that the subject-matter of said second application to Kane, Serial No. 2097, filed January 14, 1915, upon which the patent in suit was granted, was not disclosed in the earlier application of Kane, Serial No. 541,428.

XIII.

The defendant, Splitdorf Electrical Company, answering as to Paragraph VIII of the Supplemental Bill, admits that on or about the 24th day of August, 1915, an interference, No. 39,013, was declared between the application of Kane, filed January 14, 1915, Serial No. 2097, and a patent to John Lewis Milton, No. 1,096,048, of May 12, 1914; and that on or about the 277 30th of March 1917, the said Examiner of Interferences entered what purports to be a judgment, awarding priority of invention of the subject matter of Claims 2 and 3, relied upon by the plaintiff herein to Edward Joseph Kane; defendant alleges that said interference proceeding was not an adversary one, but was on the contrary collusive in that during the pendency of the interference, and when the said judgment was entered, the plaintiff, Webster Electric Company,

was the owner of the entire right, title and interest in and to the said Kane application and in and to the invention claimed therein, and that the entire right, title and interest in and to said John Lewis Milton patent was held by Lynn A. Williams, solicitor for the plaintiff herein, as Trustee, under and by virtue of a written contract of purchase between John Lewis Milton and the plaintiff, the Webster Electric Company, by the terms of which contract the said Trustee was empowered and directed by the parties hereto to transfer the entire right, title and interest in and to the said Milton patent to the said plaintiff, upon the payment of the said plaintiff to the said Milton of the agreed price therefor; that as defendant is informed and believes, and therefore alleges the fact to be, that the agreed purchase price has been paid, and the said title transferred by the Trustee to the plaintiff; and defendant is informed and believes, and therefore alleges the fact to be, that the said Lynn A. Williams at all times during the pendency of said interference between Kane and Milton was paid for his services wholly by the plaintiff, the Webster Electric Company, and, as defendant is informed and believes, and therefore alleges the fact to be, that all the expenses of said interference were paid by the plaintiff, and that the said Lynn A. Williams, acting solely for the plaintiff, controlled both sides of said interference and conducted the same both for Milton and Kane, and that, therefore, said judgment of priority in favor of Kane is void and of no
278 force and effect, and that the Commissioner of Patents was without power to grant a second patent to Kane for any invention described and claimed in and by said Milton patent, first issued to Milton, and that therefore the Kane patent is void and of no force and effect.

XIV.

This defendant, answering Paragraph XIII of said Original Bill in the Nature of a Supplemental Bill, denies that it has, individually or jointly, or in cooperation and confederation and conspiracy with any of the other defendants mentioned in said Original Bill in the Nature of a Supplemental Bill, produced, or caused to be produced, or exhibited, or offered for sale, or sold or endeavored to sell, or is now exhibiting or offering for sale, or endeavoring to sell, or threatening to sell or threatening to manufacture, in the Northern District of Illinois, and the Eastern Division thereof, or elsewhere throughout the United States, devices or apparatus embodying the alleged invention covered by Letters Patent No. 1,280,105, sued

upon, or have in any way infringed upon the rights of the complainant herein, or threatens to continue so to do, and denies that it has derived or realized any profits which plaintiff would have derived from its alleged exclusive rights, and denies that the plaintiff has been and will be greatly injured, or has incurred any damages by any unlawful or wrongful acts of said defendant.

Wherefore, the defendant demands that the Original Bill and the Original Bill in the Nature of a Supplemental Bill, be dismissed for want of equity, with costs to the defendant.

D. B. GANN

G. H. PEAKS

CHAS. C. BULKLEY

Solicitors for Defendant, Splitdorf Electrical Co.

STURTEVANT & MASON, ESQS.

of Washington, D. C.

Of Counsel.

279 SEPARATE ANSWER OF DEFENDANT HENRY JOSEPH PODLESAK TO THE SUPPLEMENTAL BILL. F

(Filed December 3, 1918)

The defendant, Henry Joseph Podlesak, for his separate answer to the original bill in the nature of a supplemental bill filed on or about October 24, 1918, by the Webster Electric Company of Wisconsin, as successor to the Webster Electric Company of West Virginia, the original plaintiff in above identified case, respectfully says:—

1. This defendant denies that he has committed or is committing any acts of infringement upon any of plaintiff's patents.

2. This defendant admits, upon information and belief, that the Webster Electric Company of Wisconsin is successor and assignee to the Webster Electric Company of West Virginia in all things including actions at law, books of record, and obligations, substantially as related in subdivision III of said Supplemental Bill; further answering, this defendant admits that said West Virginia company did file, on or about October 12, 1915, an original bill of complaint, as related in Subdivision I of said Supplemental Bill; defendant further admits that he was duly served with process or subpoena and that he made answer to said original bill which answer was filed on or about November 18, 1915, as related in Subdivision II of

said Supplemental Bill, and which said answer this defendant here adopts, in his behalf, for the same purpose as tho repeated in full herein.

3. The defendant alleges that he has no knowledge or information as to matters related in Subdivisions IV, V, VII, VIII, X, XI, and XII, except as advised by said Supplemental Bill.

4. Answering Subdivision VI of said Supplemental Bill this defendant denies that the plaintiff is entitled to the relief demanded against this defendant or to any relief whatsoever, either at law or in equity, against this defendant, and this defendant repeats his adoption hereinto of his answer filed on or about November 18, 1915, as tho repeated in full herein.

5. This defendant admits that interference No. 39,181 was declared by the United States Patent Office on or about October 29, 1915, between an alleged divisional application of one Kane, Serial No. 2097, and the Podlesak reissue patent No. 13,878, and that said interference was duly prosecuted and was finally determined, substantially as related in Subdivision IX of said supplemental Bill.

6. Answering the allegations contained in Subdivision XIII of said Supplemental Bill, this defendant denies that he has produced or caused to be produced, exhibited or is exhibiting, offered for sale, sold or endeavored to sell, is endeavoring or threatening to sell, or threatening to manufacture, in the Northern District of Illinois and Eastern Division thereof, either individually, or jointly and in co-operation and confederation and conspiracy with any one whatsoever, any devices or apparatus embodying any invention covered by Letter Patent No. 1,280,105, as now existing; and, without hereby admitting the validity of said Letters Patent No. 1,280,105, this defendant denies that he is infringing upon said Letters Patent or upon any plaintiff's rights therein.

7. This defendant denies that said plaintiff is entitled to relief demanded in Subdivision XIV of said Supplemental Bill against this defendant or to any relief whatsoever, either at law or in equity, against this defendant.

8. As to doings and things charged in said Supplemental Bill against said Emil Podlesak, said Splitdorf Electrical Company, and said Sumter Electrical Company, either individually or among themselves, this defendant is without knowledge.

9. And, by way of stating his set-off or counter claims, this

defendant, for this purpose, adopts, all and singular, the
281 matters and things hereinbefore set forth, and prays that
the matters and things, all and singular, contained in the
original bill of complaint as amended, may be by this Honor-
able Court fully and finally heard, adjudged and decreed on
the merits thereof; that the plaintiff herein, as successor and
assignee of the Webster Electric Company of West Virginia,
may be decreed to account to this defendant for royalties not
fully accounted for, due, and unpaid for periods previous to
October 1, 1915, as partially appears in Exhibit G, attached to
said original bill, to the end that there may be an avoidance of
multiplicity of suits; and prays to be hence dismissed with his
reasonable costs and charges in this behalf most wrongfully
sustained.

HENRY JOSEPH PODLESAK
In His Own Proper Person.

.....
Of Counsel.

State of Illinois }
County of Cook } ss

Henry Joseph Podlesak, being first duly sworn, on oath de-
poses and says that he is the defendant of that name men-
tioned in the Bill of Complaint and in his answer in the fore-
going entitled action; that he has read the above and fore-
going answer signed and subscribed by him and knows the
contents thereof, and that the same is true of his own knowl-
edge, excepting the matters herein stated on his information
and belief, and as to those matters he believes it to be true.

HENRY JOSEPH PODLESAK

Subscribed and sworn to before me this 2nd day of Decem-
ber 1918.

ELLEN H. CLEGG
Notary Public, Cook County, Illinois.

7. 282 ANSWER OF TESLA EMIL PODLESAK

(Filed December 7, 1918)

The defendant Tesla Emil Podlesak, for answer to the "Original bill in the nature of a supplemental bill" filed herein by the plaintiff, says:

I.

The defendant Tesla Emil Podlesak hereby adopts and makes a part of this answer all of the allegations of his answer heretofore filed by this defendant to all former pleadings filed by the plaintiff or its predecessor, the Webster Electric Company of West Virginia.

II.

Admits and alleges that the plaintiff Webster Electric Company of Wisconsin has at all times since its incorporation been and now is a citizen and resident of the State of Wisconsin, having its location, principal office and place of business at the City of Racine, Racine County, in the Eastern District of Wisconsin; and that this defendant Tesla Emil Podlesak has at all of the times mentioned in the pleadings on behalf of the plaintiff herein been, and at the time of the commencement of said action and of the filing of the supplemental bill by plaintiff continuously was and now is a citizen, resident and inhabitant of the City of Racine in the County of Racine in the Eastern District of Wisconsin; and alleges that there never has existed and does not now exist any diversity of citizenship between the plaintiff Webster Electric Company of Wisconsin and this answering defendant; that this defendant has never within the period stated in plaintiff's supplemental bill maintained, and does not now maintain any office or place of business within the Northern District of Illinois or in the Eastern Division thereof, and that this honorable court has not acquired jurisdiction over this answering defendant and is without such jurisdiction over the subject matter of this action or person of this defendant.

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III.

This defendant denies that the cause of action stated or attempted to be stated against this answering defendant in plaintiff's original bill in the nature of a supplemental bill was or is assignable; and as this defendant is informed and verily

believes and states the fact to be, said plaintiff the Webster Electric Company of Wisconsin has not by virtue of said alleged assignment acquired any rights whatever against this answering defendant.

IV.

This defendant is without knowledge of the allegations contained in subdivision VIII of plaintiff's original bill in the nature of a supplemental bill.

V.

Answering subdivision IX of said original bill in the nature of a supplemental bill, this defendant admits that an interference proceeding numbered 39181 was declared by the United States Patent Office on the 29th day of October, 1915, between the divisional application of Kane Serial Number 2097 filed January 14, 1915, and reissue patent Number 13878 to defendant Podlesak, and was duly prosecuted in and through the United States Patent Office and into the Court of Appeals of the District of Columbia substantially as alleged in plaintiff's said supplemental bill; and admits and alleges that said interference resulted in a judgment of the Court of Appeals of the District of Columbia, awarding priority of invention as to the subject matter of said claims to the said Podlesak, as alleged in said paragraph IX; and alleges that after said judgment or decision, the claims aforesaid constituting the subject matter of the issue in said interference were canceled and stricken out of the Kane application and two claims were incorporated therein by amendment (to wit, claims 7 and 8 of the Kane Patent), on or about the 17th day of June 1918. Defendant alleges that the Commissioner of Patents improperly and without authority of law granted the patent to the said Kane for the subject matter 284 described in claims 7 and 8 thereof, because said Kane was estopped by his laches from making said claims for said subject matter, and that, therefore, said claims are void and of no force and effect; and this defendant denies that subsequent to and after the decision of the Court of Appeals of the District of Columbia, awarding priority to Podlesak in the interference numbered 39181 between Kane and Podlesak, the Commissioner of Patents allowed to the applicant Kane claims other than those involved in said interference between Kane and Podlesak, and denies that the claims which were so allowed, to wit, claims 7 and 8, differed from the claims in-

volved in the interference, and denies that said claims so allowed did not constitute and had not constituted the subject matter or issue of said interference, but on the contrary alleges that said claims so allowed by the Commissioner of Patents in said application of Kane, upon which the patent in suit was granted (to wit, claims 7 and 8) subsequent to the termination of the said interference and after the final judgment awarding priority to Podlesak, were substantially the same claims as those which were involved in and constituted the subject matter or issue of the said interference, and were in fact claims for the same invention involved in said interference, and which was determined and adjudged to be the invention of this answering defendant Podlesak; wherefore this defendant alleges that the judgment or decision of the Court of Appeals in said interference between Kane and Podlesak, Number 39181, awarding priority of invention to this answering defendant Podlesak, was and is *res adjudicata* against the right of said Kane to have a patent for the invention described in said claims 7 and 8, and that the said claims in the said Kane Patent in suit are void and of no force and effect.

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VI.

This defendant denies, upon information and belief, that the said Edmund Joseph Kane was the true, original or first inventor of any new or useful improvement as alleged in said original bill in the nature of a supplemental bill, and denies that said invention was not known and used in this country or patented or described in any printed publication in this or any foreign country before his alleged invention thereof or that the same had not at the time of his application for a patent therefor been in public use or on sale for more than two years; and on information and belief alleges the fact to be that said Edmund Joseph Kane was not the original and first inventor or discoverer of the invention purported to be covered by Letters Patent 1280105 or of any material or substantial part thereof, and that the same or material or substantial part thereof had been in public use and on sale in this country prior to said alleged invention, and for more than two years before the application for said Letters Patent in suit, by the following named persons, at the following named places, to wit: Webster Electric Company of West Virginia at Chicago, Illinois, Tiffin, Ohio, and Racine, Wisconsin; International Harvester Company at Chicago, Illinois, and at Milwaukee, Wisconsin.

VII.

That, as defendant is informed and verily believes, the invention purported to be described in and covered by Letters Patent Number 1280105 was worked out in the shops of said International Harvester Company at Milwaukee, Wisconsin, by one Mr. Bradley, now deceased, William Andrew and Ed Wild and other experts in said shop, more than two years prior to the filing of the application therefor; and that, as this answering defendant is informed and verily believes, said Wil-

liam Andrew disclosed said invention to John Lewis Mil-

286 ton prior to the filing of the application of said Milton Patent Number 1096048, and prior to the application for said Kane Patent numbered 1280105.

VIII.

This defendant, answering paragraph XIII of said original bill in the nature of a supplemental bill, denies that he has, either individually or jointly or in confederation or in conspiracy with any of the defendants herein or with any person, firm or corporation whatsoever, produced or caused to be produced, or exhibited or offered for sale, or sold or endeavored to sell, in the Northern District of Illinois and Eastern Division thereof, or elsewhere throughout the United States, devices or apparatus embodying the alleged invention covered by Letters Patent 1280105; and denies that he, either alone or in combination or conspiracy with any person, firm or corporation whatsoever, ever has exhibited or is now exhibiting or offering for sale or endeavoring to sell, or threatening to sell, or threatening to manufacture in the Northern District of Illinois and the Eastern Division thereof, or any place else in or throughout the United States, devices or apparatus embodying the alleged invention or secured by Letters Patent 1280105; and denies that he, this answering defendant, either alone or in combination, confederacy or conspiracy with the other defendants or with any person, firm or corporation whatsoever, has infringed or was infringing or is now infringing, and denies that this answering defendant, either individually or jointly or in combination with any person, firm or corporation whatsoever, has ever threatened to infringe said Letters Patent or the rights of the plaintiff therein; and denies that he intends, either alone or in combination, confederacy or conspiracy with any person, firm or corporation whatsoever, to continue to threaten to so infringe said Letters Patent or plaintiff's rights thereunder, in the Northern District of

Illinois and Eastern Division thereof, or anywhere else 287 throughout the United States; and further answering, denies that he has in any manner profited by, because of or through any alleged infringement by any person, firm or corporation whatsoever, at any time or any place in said Northern District of Illinois or anywhere else throughout the United States of America or elsewhere; and denies that said plaintiff has been or will be greatly injured, or has or will incur, suffer or sustain any damages whatsoever by or because of any wrongful or unlawful acts of this defendant.

IX.

This defendant denies that said plaintiff is entitled to the relief demanded in subdivision XIV of said supplemental bill, against this defendant, or to any relief whatsoever, either in law or in equity, against this defendant.

X.

As to the doings and things charged in said supplemental bill against said Splitdorf Electrical Company and said Sumter Electrical Company, either individually or among themselves, this defendant is without knowledge.

Wherefore defendant demands that the original bill in the nature of a supplemental bill be dismissed for want of equity, with costs to this defendant.

THOMPSON MYERS & O'KEARNEY
*Solicitors for the defendant Tesla
Emil Podlesak.*

WILLIAM D. THOMPSON
Of Counsel.

WILLIAM L. HALL, Esq.
Local Counsel,

1539 Marquette Bldg.,
140 So. Dearborn Street,
Chicago, Illinois.

288 AMENDMENT TO ANSWER OF SPLITDORF ELECTRICAL COMPANY. PL 1

(Filed January 9, 1919.)

And now comes the defendant, the Splittorf Electrical Company, as amends its answer to the so-called "Original Bill In The Nature of A Supplemental Bill" of the plaintiff upon leave of Court first had and obtained, as follows:—

After the caption and title, erase the first paragraph commencing "The defendant, Splittorf," etc., and ending "says:—" and insert in lieu thereof, the following:—

"The defendant, Splittorf Electrical Company, by way of plea in the answer of the "Original Bill In The Nature Of A Supplemental Bill" of the plaintiff, alleges:—

1.

That under and by virtue of the contract between the said defendant and Emil Podlesak and Henry Joseph Podlesak, dated September 4, 1915, and made a part of the original complaint herein, and referred to therein as "Exhibit F", it became vested with the right to manufacture and sell magneto electric ignition devices under the patents embodied in the contract of license dated February 5, 1914, between the said Podlesaks and the plaintiff, the Webster Electric Company, which said contract is made a part of the original complaint herein and referred to as "Exhibit D"; and defendant further alleges that it also became vested with any and all rights

acquired by said Podlesaks, or either of them, under and 289 by virtue of said contract of February 5, 1914, (Exhibit D); that all and singular of the magneto electrical ignition devices made and sold by said defendant, and complained of as an infringement of the patent to Edmund Joseph Kane, No. 1,280,105, dated September 24, 1918, are and always have been made under and in accordance with the said Podlesak patents embodied in the said contract of February 5, 1914 (Exhibit D), and that, therefore, the plaintiff is estopped to claim that the manufacture and sale of the magneto electric ignition devices complained of herein is an infringement of the said Kane patent; and the defendant further alleges that at and prior to entering into the contract of February 5, 1915, (Exhibit D), the plaintiff herein was claiming ownership in and possession of the invention set forth and claimed in the patent to John Lewis Milton, No. 1,096,048, dated May 12, 1914,

which said claim of ownership and possession was known to each of the defendants, T. Emil and Henry Joseph Podlesak; whereby the said defendants T. Emil and Henry Joseph Podlesak had good reason to believe at the time of entering into said contract, were led to and did believe, and rely and act on such belief, that the plaintiff had waived, abandoned or relinquished any right or rights which it might have had in or under said patent of Milton, to claim any infringement of said patent by the manufacture and sale by the Podlesaks, or their assignee, of the invention described or claimed in the said Podlesak patents, and did not intend to insist upon any such right or rights as against the said defendants, the Podlesaks or their assignee, the defendant Splitdorf Electrical Company; and that the Kane patent in suit describes and is for the same invention described and claimed in said patent of Milton; wherefore, the plaintiff having waived any right which it might have had to claim infringement of the said Kane patent, and defendant having relied and acted 290 thereon; the plaintiff is estopped to maintain its cause of action against the defendant, Splitdorf Electrical Company, for the alleged infringement of the claims of the said Kane patent relied upon, or any one or more of them.

And the defendant, Splitdorf Electrical Company, asks the Court to hear, try and determine the defense aforesaid thus set up by way of plea in the answer, before proceeding to a trial of and hearing upon the general defenses hereinafter set forth.

And the defendant, Splitdorf Electrical Company, answering the said "Original Bill In The Nature Of A Supplemental Bill", generally, alleges and says:—

Change the ordinals of Paragraphs "1" to "XIV" inclusive, to II to XV inclusive.

DAVID B. GANN
GEORGE H. PEAKS
CHARLES C. BULKLEY

Solicitor for Defendant—Splitdorf Electrical Company.

Chicago, Jan. 8, 1919.

STIPULATION.

The parties, by their counsel, in order to obviate the necessity of certain formal proofs, hereby stipulate as follows:

1. Webster Electric Company, the plaintiff named in the Original Bill in the Nature of a Supplemental Bill, is a corporation organized and existing under the laws of the State of Wisconsin, having its principal place of business in Racine, Wisconsin.

2. Webster Electric Company of Wisconsin acquired by purchase the entire business, rights and obligations of Webster Electric Company, a West Virginia corporation, the plaintiff named in the original Bill of Complaint, by a written instrument executed on or about March 12, 1918, and on or about May 31, 1918, Webster Electric Company of West Virginia was duly dissolved and its corporate existence ended, all as alleged in the Original Bill in the Nature of a Supplemental Bill.

3. United States patent application Serial No. 2097, filed January 14, 1915, by Edmund Joseph Kane, for an improvement in Electric Igniters, was assigned by said Kane to 292 Webster Electric Company of West Virginia by a written instrument executed on or about April 20, 1916, and recorded in the United States Patent Office on or about May 4, 1916; and said application was assigned by said Webster Electric Company of West Virginia to plaintiff, Webster Electric Company of Wisconsin, by a written instrument executed on or about March 12, 1918, and recorded in the United States Patent Office on or about March 25, 1918, pursuant to which United States patent No. 1,280,105 was granted by the Commissioner of Patents to Webster Electric Company of Wisconsin.

4. Defendant Sumter Electrical Company executed a certain assignment to Splitdorf Electrical Company dated on or about February 1, 1916, and recorded in the United States Patent Office on or about March 15, 1916, a copy of said assignment being attached hereto.

5. Defendants, Emil Podlesak and Henry Joseph Podlesak, as parties of the first part, and defendants Splitdorf Electrical Company and Sumter Electrical Company, as parties of the second part, entered into a certain agreement on or about the 3rd day of November, 1915, with relation to the word "Podlesak", a copy of which agreement is attached hereto.

6. On October 28, 1909, John L. Milton, a citizen of the United States, was in possession, within the United States, of knowledge of the invention disclosed in United States Patent to Milton No. 1,096,048, issued May 12, 1914, for Magneto Generator, and in the corresponding British patent to John L. Milton No. 24,838, of 1909, application for which was filed in the British Patent Office on October 28, 1909.

7. Patent Office printed copies of United States patents may be introduced in evidence by either party with the same force and effect as certified copies thereof, subject to correction if error be found.

8. Printed copies of all letters patent of Great Britain may be used with the same force and effect as certified copies thereof, and the publication dates printed thereon shall be taken as prima facie true.

9. The accompanying Exhibit B is a sample of devices manufactured and sold by the defendant Splitdorf Electrical Company subsequent to February 9, 1915, and continuously thereafter and until the present date.

10. The accompanying Exhibit C is a sample of devices manufactured by the defendant Splitdorf Electrical Company beginning on or about October, 1918, and continuously thereafter until the present date, and sold or offered for sale during the said period by the said Splitdorf Electrical Company, subject to the objection of immateriality.

WILLIAMS, BRADBURY & SEE

Attorneys for Plaintiff.

CHARLES C. BULKLEY

Attorney for Defendants.

January 3, 1918.

Whereas, the Sumter Electrical Company, a corporation organized and existing under and by virtue of the laws of the State of South Carolina, having its principal office and place of business in the City of Sumter, in said State, is the joint owner of the inventions and the Letters Patent of the United States of America therefor, to-wit:

No. 947,647 issued Jan. 25, 1910.

No. 948,483 issued Feb. 8, 1910.

No. 1003,649 issued Sept. 19, 1911.

No. 1022,642 issued Apr. 9, 1912.

Re-issue 13,878 issued Feb. 9, 1915.

No. 1056,360 issued Mar. 18, 1913.

No. 1101,956 issued June 30, 1914.

No. 1098,052 issued May 26, 1914.

No. 1098,754 issued June 2, 1914.

Whereas, the Splitdorf Electrical Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its principal office and place of business in the City of Newark, and State of New Jersey, is desirous of acquiring the entire right, title and interest in and to the said Letters Patent and any reissues, divisions, renewals or extensions of the same and the inventions covered by said patents, and to all future inventions or improvements relating to the subject matter of said patents which may be hereafter acquired by said Sumter Electrical Company; and

Whereas various agreements have been entered into between the said Sumter Electrical Company and Splitdorf Electrical Company, under which agreements the said Sumter Electrical Company has agreed to execute all papers necessary to perfect said Splitdorf Electrical Company in the full title to said Letters Patent and inventions aforesaid.

Now, Therefore, To All Whom It May Concern, Be it known, that for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to it in hand paid, the receipt whereof is hereby acknowledged, the said Sumter Electrical Company has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over, unto the said Splitdorf Electrical Company, its successors and assigns, all its right, title and interest in and to the Letters Patent aforesaid, including all claims or rights of whatsoever kind or nature arising out of past infringements thereof or any of them, the same to be held and enjoyed by the said Splitdorf Electrical Company for its own use and behoof and for the use and behoof of its successors or assigns, to the full end of the terms of the said Letters Patent and of the Letters Patent which may be issued hereafter for any reason, and any and all reissues, divisions, renewals or extensions thereof, as fully and entirely as the same would have been held and enjoyed by the said Sumter Electrical Company if this assignment and sale had not been made; and the said Sumter Electrical Company does hereby authorize and request the

Commissioner of Patents to issue the Letter patent which may be granted upon any reissue or renewal of said patents to the said Splitdorf Electrical Company, in accordance herewith;

In Witness Whereof, the Sumter Electrical Company has caused its corporate seal to be hereunto affixed and this instrument to be signed by Charles Thomas Mason, its President, and F. C. Manning, its Secretary, this 1st day of February, in the year of our Lord One Thousand Nine Hundred and Sixteen.

SUMTER ELECTRICAL COMPANY,
By C. T. MASON

President.

(Corporate Seal)

Attest:

F. C. MANNING
Secretary

296 State of South Carolina, }
County of Sumter } ss.

I, E. H. Rhame, a Notary Public in and for said County and said State, do hereby certify that said Charles Thomas Mason, whose name as President of the Sumter Electrical Company, a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance, he as such officer and with full authority executed the same voluntarily for and as the act of said corporation, February 1, 1916.

R. H. RHAME (L. S.)
Notary Public for S. C.

297 Memorandum of Agreement made and entered into this 3rd day of November, A. D., 1915, by and between Emil Podlesak of Racine, Wisconsin, and Henry Joseph Podlesak of Chicago, Illinois, parties of the first part, and Splitdorf Electrical Company, a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business located in the City of Newark, County of Essex, in said State, and Sumter Electrical Company, a corporation organized and existing under the laws of the State of South Carolina, having its principal office and place of business in the City of Sumter, County of

Sumter, in said State, said corporations jointly parties of the second part.

Whereas the parties hereto on the 4th day of September 1915 made and entered into a certain contract in writing, whereby the parties of the first part assigned to the parties of the second part their entire interest in certain patents and applications for patents and patent rights, together with the entire interest in certain license agreements with the Webster Electric Company, and also the entire interest and good will of the parties of the first part in the business of manufacturing and selling magneto ignition apparatus for internal combustion engines and any other apparatus described or claimed in said letters patent and applications and included in said license agreements, said contract and assignment having been recorded on the 27th day of September 1915 in Liber A 98, page 190 of Transfers of Patents; and

Whereas it was recited in said written contract and assignment that the parties of the second part were desirous of acquiring among other things the entire interest of the 298 parties of the first part in the business of manufacturing and selling ignition apparatus for internal combustion engines together with their good will appertaining to the said business, in part represented by the association of their names or either of them with said business or with apparatus manufactured or to be manufactured and sold under the aforesaid letters patent and applications or said agreements; and

Whereas at the date of the execution of the aforesaid agreement and assignment, it was not contemplated or intended by any of the parties that the exercise and enjoyment of the rights conveyed thereby the parties of the second part, should conflict with the rights theretofore granted to the said Webster Electric Company as duly acknowledged in the aforesaid contract and it was inadvertently overlooked that the conveyance to the parties of the second part of the right to use the name "Podlesak" on certain devices to be produced by them or either of them, might lead to a misunderstanding of the real intentions of the parties to the said contract;

Now Therefore to remedy the said oversight in the said recorded writing, as a part of the consideration for the transfer therein named, and to carry out the real intention of the parties, the parties of the second part hereby covenant and agree to and with the parties of the first part, that any and

Memorandum of Agreement.

all products of either of the aforesaid corporations, parties of the second part, on which or in connection with which they shall hereafter use the name "Podlesak" shall in each and every instance bear or have attached thereto an additional inscription or marking showing the name of the 299 corporation or person manufacturing the same and the place where the said article was manufactured, applied in connection with and with the same degree of prominence and permanence as the said name "Podlesak", and in all advertisements and descriptive matter issued by the parties of the second part or either of them and referring to the said goods, wherein the name "Podlesak" is used in connection therewith, there shall also appear with equal prominence the name of the manufacturer and the place of manufacture, showing clearly and plainly that said product was not manufactured by the Webster Electric Company.

In Witness Whereof the parties of the first part have hereunto set their hands and affixed their seals and the parties of the second part have caused their names to be hereunto signed and their respective corporate seals affixed by their proper officers to that end duly authorized.

..... (Seal)
 (Seal)

By
President.

Attest:

.....
 Place
 Date

By
President.

Attest:

.....
 Place
 Date

..... } ss:
 }

On this day of , 1915, before me personally appeared Emil Podlesak, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

.....
Notary Public.

..... } ss:
 }

On this day of , 1915, before me personally appeared Henry Joseph Podlesak, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

.....
Notary Public.

301 State of New Jersey } ss:
 County of Essex

I, , a Notary Public in and for said county in said State, hereby certify that John F. Alvord, whose name as President of the Splitdorf Electrical Company, a corporation, is signed to foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation. Given under my hand this day of 1915.

.....
Notary Public.

State of South Carolina }
 County of Sumter } ss:

I, _____, a Notary Public in and for said county in said State, hereby certify that Charles Thomas Mason, whose name as President of the Sumter Electrical Company, a corporation, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation. Given under my hand this _____ day of _____ 1915.

Notary Public.

STATEMENT OF EVIDENCE.

PLAINTIFF'S EVIDENCE.

EDWARD H. KIMBARK, called as a witness on behalf of plaintiff, testified as follows:

302

Direct Examination by Mr. Williams.

Age 53, residence Evanston, Illinois, employed by International Harvester Company in the office of the Experimental Department. Has charge of the records of that department. Asked to produce originals or copies of certain correspondence which passed in or about 1909, between the Chicago Office of the company and its Milwaukee office, or the Experimental Departments of the two places, produced what purported to have been an original letter dated March 15, 1909, written by Mr. Waterman to the Experimental Department at Chicago. This letter was received by the witness personally at about its date and placed by him in the files of the company at that time. Letter offered in evidence as Plaintiff's Exhibit No. 1. Waterman letter of March 15th.

Objected to by defendants' counsel as not competent as against the defendants, the Splitdorf Company, and

because of no proper foundation for its reception in evidence. Received, subject to objection.

Witness produced a letter dated April 29, 1919, purporting to have been written by T. K. Webster to the International Harvester Company. Letter came to the attention of the witness at or about the date it bears and was placed in the files of the company.

Letter offered in evidence as Plaintiff's Exhibit No. 2. The same objection as to Exhibit No. 1 and the additional one of immateriality. Same ruling.

303 Witness produced letter dated March 17, 1909 from Mr. Waterman and made same statement respecting it as in respect to preceding letters. Letter offered in evidence as Plaintiff's Exhibit No. 3. Same objection and ruling.

Witness produced a letter dated June 11, 1909 to Mr. Waterman and made same statement respecting it. Letter offered in evidence as Plaintiff's Exhibit No. 4. Same objection and ruling.

Witness identified photograph attached to letter of April 29, 1909 as one that was found in the files of the company attached to the letter and assumed that the photograph was attached to the letter at the time of its receipt and had since remained attached to it.

Photograph offered in evidence as Plaintiff's Exhibit No. 5. Same objection, same ruling, with understanding that same objection and same ruling may apply to further testimony of the witness and to further exhibits of a similar character.

Witness produced a paper dated August 30, 1909 which he identified by the signature of Mr. Cavanaugh and some notations upon it, and which he stated was a copy made on or about August 30, 1909, of the paper, the original of which was returned to Milwaukee and was presumably there at the time the witness testified.

Paper offered in evidence as Plaintiff's Exhibit No. 6.

Witness was shown another paper which appeared to be a duplicate of Plaintiff's Exhibit No. 6, and stated that it was simply another copy of the same paper—that the original would bear the original signatures of the people signing the decision, while the copies bore merely typewritten signatures. The witness identified the initials of Mr. W. A. Cavanaugh on the copy and stated that he was dead, and that during his life-time he was the assistant manager of the Experimental Department of the International Harvester Company at Chicago, and that witness was familiar with his handwriting

304 and able to identify his signature.

Witness was shown a letter dated June 3, 1909, addressed "W. A. Cavanaugh, Harvester Building, City" and signed "Webster Manufacturing Company, T. K. Webster," and bearing a number of rubber stamps and notations, among others "Received by Experimental Department June 4, 1909." Witness identified letter by his notation appearing upon it and reading "Mr. Tyson: send copies as marked" and his initials under date of June 5th, which witness stated satisfied him that he had the letter in his possession at about that time.

Letter offered in evidence as Plaintiff's Exhibit No. 7.

Witness is shown another paper rubber-stamped in various ways, among others, "New Works Committee, Extract from report of Meeting, 176, 5/20/09" and identified it, by his initials upon it, in his own handwriting, dated June 1st, also the words "Three copies sent" in his own handwriting, and stated that paper was in his possession on or about June 1, 1909 and placed by him in the files at that time.

Paper offered in evidence as Plaintiff's Exhibit No. 8.

Witness was shown a paper dated May 26, 1909, signed "International Harvester Company, Milwaukee Works, H. A. Waterman, Superintendent, by L. C. Bradley" and identified it by its general appearance and by a check made in front of the name of the witness, but stated that Mr. Waterman was present and could perhaps identify it more distinctly.

Paper offered in evidence as Plaintiff's Exhibit No. 9.

Witness produced a letter from the Sales Department file written by witness to Sales Division Manager, Mr. A. E. Mayer, dated May 6, 1909 and identified it as an original letter dictated and signed by the witness at the date it bore.

Letter offered in evidence as Plaintiff's Exhibit No. 10.

Witness being asked whether he was in a position in 305 the spring of 1909 to know of the transactions to which the letters introduced in evidence related, said:

"I was familiar with the fact that we were selling, or putting on our engines, rather, for sale, the Milton magneto, and that there were serious complaints about it from the country, and that we had virtually decided, through the men that had charge of that part of the work, to abandon it unless it was corrected, and that there was a corrected or improved form submitted, which, after a test, was used, at least extensively, and the document there being an extract from the New Work Report has reference to the situation as it developed at that time."

Witness was shown a device and said "I am not a magneto

expert, and I can only say that it looks like the device that we were using. The details of its construction would be largely unknown to me."

Device submitted to the witness was offered in evidence, subject to further identification, as Plaintiff's Exhibit 11.

Witness stated referring to the papers Plaintiff's Exhibits 1 to 10, that it was at about the date of Mr. Waterman's report of March 15, 1909 that the conclusion was reached that the original form of Webster or Milton magneto was unsatisfactory, and that its use should be discontinued.

Witness identified another piece of apparatus submitted to him as being similar in its general form to the magneto which was offered to the company as an improved form of the Milton magneto and stated that, as near as he could judge, it was the same.

Piece of apparatus last referred to offered in evidence as Plaintiff's Exhibit No. 12.

Witness stated by reference to the papers which he had produced, as well as from his independent recollection, that it was some time in June, 1909 that the new form of device was adopted and accepted by the International Harvester Company.

Witness being asked if he had any independent recollection as to when it was that the Harvester Company decided that the Milton magneto was unsatisfactory said:

"A. I would have difficulty in placing the month and year, without reference to the files, but I perhaps could, of my independent recollection, before I had seen the files, place it within one or two years.

Q Have you any independent recollection as to when it was that the improved Milton magneto was accepted, other than that which you obtained from an examination of those papers?

A When the New Work Committee examined this magneto it, was at the Milwaukee works, and my recollection is that I went to the Milwaukee works, in the capacity of secretary of that Committee, and saw the magneto, saw it explained by the experts, and that soon after that, within the course of perhaps a month or six weeks, it had been tested out, and we, as a department, authorized its use on the Harvester engines."

Being asked whether he had examined the files of the Experimental Department at Milwaukee to discover whether

there were any papers there relating to this matter, witness said:

"A I looked only in our own files, at the Chicago Office, for certain letters which the attorneys on the other side asked me to see if I could locate. That is as far as my examination extended."

Witness said that his examination of the Chicago files showed that two letters were missing from it, which were produced by Mr. McCaleb, who is with Mr. Williams, but Mr. McCaleb did not tell witness where he found or got them.

307 H. A. WATERMAN called as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Mechanical engineer, age 47, residence, Laporte, Indiana. Was connected with the International Harvester Company as superintendent of its Milwaukee plant. Company was engaged there in the manufacture of internal combustion engines and witness had full charge of all the manufacturing at that time. Witness was present and heard the testimony of Mr. Kimbark just given.

Attention of the witness called to Plaintiff's Exhibit No. 1. Witness identified it as his personal report to the Experimental Department of the conditions then existing, was signed by witness and written by him on March 15, 1909.

Attention of the witness was called to the letter, Plaintiff's Exhibit No. 2, but witness said he never saw the letter and did not know that he ever saw a copy of it.

Attention of the witness was called to the letter, Plaintiff's Exhibit No. 11, concerning which witness said he probably saw a copy of it, but did not remember it—that it would have come to him as a mere matter of routine.

Witness identified the letter Plaintiff's Exhibit No. 9 by the signature of Mr. Bradley who was mechanical assistant to the witness in his office, and who died shortly after the date of that letter, May 26, 1909. Being asked as to the meaning of the words "New Work Committee Report" appearing in this letter of May 26, 1909, witness said:

"A The organization of the International Harvester Company at that time included at the Chicago Office what they called a New Works Committee, made up of the department

heads, including sales, manufacturing and experimental, 308 approximately. In charge of the works at Milwaukee, for instance, the superintendent would delegate certain work to be completed to one or more individuals. When that test was completed the results of the test would be reported upon a form, a printed form, which is called the New Works Report, that report going direct, I think, to the Experimental Department in Chicago for use of the New Works Committee, a copy of which was retained in my office."

Attention of the witness being called to paper marked Plaintiff's Exhibit No. 8 and witness being asked if he could say what it was, replied:

"A Well, there is nothing here to indicate definitely that that is the report of the gentlemen who came to Milwaukee from Chicago to see the apparatus under test, but in my own mind I am sure that is the case. In other words, representatives of the New Works Committee came to Milwaukee to see the engine under test, and that is a report of what they were told."

Witness said the initialing upon the left-hand side of the paper with a rubber stamp indicated that a copy of the statement was sent to the witness from Chicago.

Continuing, the witness further said:

"The original statement was made at Milwaukee and submitted to the Chicago Office. Then a meeting was held in the Chicago office of the parties interested. They made up a general statement, of which that is one section, and that general statement was distributed among the men at the Works interested."

In regular routine a copy of this report would have gone to the witness at Milwaukee, but witness did not definitely recall the date when he received it.

Being asked whether he recalled giving the advice as stated in the report, witness said:

309 "I only recall the fact that we did not with my sanction ship any more of the Milton magnetos, and when we resumed shipment we shipped another kind."

The matter of the improved magneto or new magneto had been previously discussed between the witness and other department heads of the Harvester Company in Chicago or Milwaukee; the Sales Department was demanding shipment of engines and was naturally waiting for the decision of witness as to whether or not that type would be satisfactory. As to whether or not witness recommended that the thing be tried out on an engine for several weeks, witness said:

"Very likely, although I do not know that. There is a system in the Harvester Company by which, when the Works, responsible for any particular part of any program, decides that it is right to go ahead and complete such work, the decision is put through. That is according to that form that you have there, what we call a 'decision.' When that magneto was considered satisfactory a decision originated in my office, probably signed by Mr. Bradley, possibly by myself, which went to Chicago. Then the New Works Committee, possibly Mr. Mayer of the Sales Department, would decide to approve or disapprove my recommendation, so that if any decision was made it originated at Milwaukee under my direction."

With reference to the new form of apparatus and to witness advising that he would like to run it for two or three weeks before passing upon it, witness said:

"I remember distinctly the day the new form was presented to me."

Being asked to describe that new form, particularly in so far as it differed from the older form with which witness had found fault, witness said:

310 "Well, in a word, the real difficulty of the older form was that it very soon and very seriously was out of order. It failed to work properly. The new form was concise and compact, and of such construction that it was not easily distorted, and there was practically no clearance which could not be maintained, necessary clearance, and that it could be removed completely without danger on the part of the farmer or operator of putting it out of order when he tried to put it back in place again. It was compact with the plug. That is the brief way of saying what the difference was."

Being shown the piece of apparatus marked Plaintiff's Exhibit No. 12 and asked to state what it was and when apparatus of that form first came to his attention, witness said:

"That I am quite sure is the first departure from the construction which gave trouble, to which we have just been referring, and this sample was placed on my desk by Mr. Maurice Kane and his son."

Q The two Kanes who are here in the court room today?

A Mr. Maurice Kane and Mr. Joe Kane. I remember it distinctly, because that is the first time I met Mr. Joe Kane."

Being asked to state by reference to the various papers Plaintiff's Exhibits 1 to 10 inclusive, or as a matter of his independent recollection, when it was that Maurice Kane and his

son Joe Kane brought this improved form of machine to the witness at Milwaukee and put it on his desk, witness said:

"Well, it wasn't many weeks—it must have been, oh, approximately, a month or so afterward—after we had made the decision not to ship any more of the older ones and had made the statement to which you first referred."

Witness identifies Plaintiff's Exhibit 4 as a letter dictated and signed by the witness at the date it bears, June 11, 311 1909, and addressed to Experimental Department, Harvester Building, Chicago, and says:

"It is a complete statement of what we then thought the new magneto was."

Witness identifies the improved Milton magneto referred to in his letter of June 11, 1909 with Plaintiff's Exhibit No. 12, saying:

"I am quite sure that is the identical apparatus. I mean that this is so near like the other one that I could not tell the difference from memory."

It was of a machine like Plaintiff's Exhibit No. 12 that witness wrote that it overcame the important objections raised by him in his letter of March 15th. Witness further testified:

"Q Now, in this letter of yours, dated June 11th, you make some argument, as I understand you, as to why the Harvester Company should purchase from the Webster Manufacturing Company without including the igniter plug as a part of their product. Now, will you please explain, referring if you like to the Plaintiff's Exhibit No. 12, what you had in mind in making that recommendation.

A Every engine, or approximately every engine, has a different sized plug as regularly equipped, independent of the magneto. This part of the magneto, of course, includes the plug, so that in having the Webster people furnish parts to us we took their sample and made the plugs ourselves so that they might be interchangeable with our own parts, but we did not depart from the construction as they had it there at that time in the sample.

Q Well, then, as I understand you, or let me ask you first: Following your approval of the machine which the Webster people submitted through Mr. Kane, and which you 312 tested and then wrote approvingly of on June 11th, did the Harvester Company use and install equipment like this Plaintiff's Exhibit No. 12 in considerable quantities?

A Yes, sir; just as soon as we could make our parts and they could furnish theirs, we put them on the engines and stopped the other.

Q Now, do I understand you that it was your recommendation on June 11, 1909, that the Harvester Company, rather than the Webster Company, manufacture some part of the equipment as embodied in this Plaintiff's Exhibit No. 12?

A Yes, sir.

Q That is, some part of this apparatus here you thought had best be made by the Harvester Company and some other part by the Webster Company?

A Yes, sir.

Q Now, won't you describe in some way, so that it will be clear on the written record, the part of that equipment which you recommended that the Harvester Company should make and as distinguished from the part which was to be purchased from the Webster Company?

A The Webster Company made what you might properly call the magneto proper. The Harvester Company made what might be included in the plug and the bracket which supports the magneto.

Q And it was your recommendation, then, that the manufacture be divided in that way?

A Yes, sir.

Q That is the recommendation contained in your letter here of June 11th which I have read?

A Yes, sir.

Q And as I gather from your explanation in this letter, your argument was that since the plug and the bracket proper would take somewhat different shapes as required for different engines, whereas the magneto proper, as you have termed it, might be identical for all of the different engines, therefore, you thought that the Harvester Company had best make the plug and bracket part in order not to have to carry in stock magnetos sufficient to equip all of the different plugs and brackets?

A Yes, sir, but more in particular because the fitting of the plug to the engine would naturally be the shop product of the International Harvester Company and not of the magneto factory.

Q Now, your letter of June 11, 1909 uses this phrase—after stating the reason you say:

“We should not have the igniter plug included as a part of their product”;
that is, as a part of the Webster Company's product. Now, when you refer there to the igniter plug you refer to some part of the equipment as embodied in this Plaintiff's Exhibit 12, do you not?

A Yes, sir.

Q In this letter you say that you already have seven different designs of igniter plugs for make-and-break engines; that is—

A I understand. That means that there are seven different sizes and forms for each—one for each different size of engine.

Q One of those igniter plugs as referred to in that sentence of the letter,—is that indicated on this cut on the back of Plaintiff's Exhibit No. 13?

314 A Yes, sir. That refers to a part here (indicating.)"
Being shown the paper marked Plaintiff's Exhibit No. 6, witness said:

"That is a copy of the—if not the original—I rather think it is the original—I can't tell. I think it is the original, at least a copy, of the formal decision to which I referred some time ago as originating at the Works recommending or determining that a certain process should be carried out—in this case the adoption of this magneto. It has my rubber stamp on it and went through my office. That punch there (indicating) indicates my own personal contact with the letter. By the way, the other one you asked about had my punch on it. That is positive proof it had my personal attention. I didn't notice that before—that 'H. A. W.' down in the corner there.

Q Now, do I understand that on August 30, 1909 all of the formalities had been complied with by the Harvester Company in determining and settling the matter that from thenceforth the form of the machine as submitted to you by Mr. Kane was to go into use?

A If that is signed, then that is complete; that is final. Yes, that is signed by Mr. Cavanaugh personally, so that is final. The date in the corner would determine that, in ink at the bottom. That is the final approval of the Chicago Office, although the work didn't go into effect until August 30th.

Q You mean this date, September 21, 1909, that is Mr. Cavanaugh's final approval?

A This August 30th is the date upon which the work went into effect at the plant, and this date, September 21st, is the date upon which Mr. Cavanaugh placed his final approval at Chicago in the file."

315 Being asked what was said and what occurred on the occasion when Maurice Kane and his son Joe Kane came to the Milwaukee Works with the first sample of the new form

of machine, substantially identical with Plaintiff's Exhibit No. 12, witness said:

"Why, I remember it as if it were yesterday. Mr. Kane very seldom came to Milwaukee, and he came in and introduced his son to me, and his son put that magneto on my desk. I didn't notice it at first, and then Mr. Kane called it to my attention and wanted to know what I thought of it. 'Well,' I said, 'you have got something now.' I remember that very well, indeed, almost those exact words."

Witness had been acquainted with Maurice Kane prior to his coming to Milwaukee at that time; he was manager of the Experimental Department, directly superior to Mr. Cavanaugh, and his regular place was in the Harvester Building at Chicago.

The first sample of the new machine left with the witness by Mr. Kane was put on an engine and run continuously night and day for several weeks, during which time the witness saw it several times, saying: "But, of course, there was nothing to indicate anything different from any other magneto until it went wrong—unless it went wrong." And it was as the result of this test that witness wrote his letter of June 11, 1909, of which witness says:

"I would say sure that I wrote that letter. It is pretty strong; and I do not remember of any trouble with it at all."

The Webster Company began making deliveries or shipments of the new form of machine like Plaintiff's Exhibit No. 12 in September 1909, and witness remembered no change that was made in the design while he remained with the works. Practically all engines shipped abroad and many in this country were equipped with the new device—"it would be a matter of hundreds at least."

The recommendation of the witness that the plug and 316 bracket part of the equipment should be made by the

Harvester Company and the magneto proper furnished by the Webster Company was carried out in practice. Referring to Webster Company, witness said:

"It was their sample that we tested. Then we made our own drawings and templates and tools for manufacture of that sample.

Q Your drawings were made from that sample, as I understand you?

A Yes, sir.

being the same as that made by the Harvester Company according to the plan which the witness had explained, saying:

"So far as I can tell it is the same thing. This is indi-

cated to be a Harvester product by the monogram on the casting, which is from our pattern; the monogram on the pattern, Harvester pattern; also the engine number."

The plan for the division of the work of manufacturing the new device between the Webster Company and the Harvester Company was discussed personally by the witness with Mr. T. K. Webster of the Webster Company, and agreed upon with him.

Witness had never seen an equipment like Plaintiff's Exhibit No. 12 until it was brought to Milwaukee by the Kanes, nor heard any discussion of that form of equipment with the integral plug and bracket support prior to that time, witness saying:

"No. I remember that well, because I had my boys get together and we discussed the possibility of making something satisfactory if the Webster people couldn't furnish it, and when this was presented I said this would be satisfactory and we wouldn't attempt any further work of that kind."

Witness being asked to state by reference to his letter of June 11, 1909, when it was that Kane first presented the new machine to him, said:

317 "Well, I know I wrote this letter, and I know that followed the action approving of the design, and I know that it was only a few weeks because we didn't get far with our own work attempting to try to make something satisfactory—and the tests on the engine which ran night and day had intervened."

Witness identified the photograph, Plaintiff's Exhibit No. 5, attached to the letter of April 29, 1909, as correctly showing the installation of the Kane form of equipment as tested at Milwaukee; also identified the engine shown in the photograph as a Harvester Company six horse-power engine.

Witness identified the parts produced and shown him and offered in evidence as Plaintiff's Exhibits 14A, 14B and 14C, respectively, as the parts made by the Harvester Company and represented by Plaintiff's Exhibit No. 14. The four parts, with the addition of springs and paper pins and fastening devices, constituted, when put together, the entire equipment substantially like Plaintiff's Exhibit No. 12. The Webster Company furnished the springs.

Referring to the integral plug and bracket fastening, Plaintiff's Exhibit No. 14, the parts which fitted to the engine were always the same for the same engine, but different with different engines, nearly every size of engine, because of

the change in size, having its own size of plug. The supporting part, upon which the magneto generator proper was mounted, was always the same regardless of whether the engine was of the horizontal or vertical type. The same was true of the part represented by Plaintiff's Exhibit 14A.

Being shown a piece of apparatus offered in evidence as Plaintiff's Exhibit No. 15, witness said:

"Well, I am not sufficiently familiar with the details to know whether that is the particular form that was used on the vertical engine, or on the horizontal engine. All I do know is that this is the improved Milton magneto, and that

that is the particular form of plug which supported the 318 magneto, and which was placed in the engine in place of the regular standard plug of the engine."

Witness recognized the exhibit as the form or type of machine which was installed by the International Harvester Company following the adoption of that general style of machine.

Cross-Examination by Mr. Bulkley.

Witness is now engaged in private practice as a mechanical engineer—consulting engineer—and has been for three years past. Has not been directly connected with gasoline engines of the type involved in this case since leaving the Harvester Company but has kept in touch generally with the development of the art. Left the Harvester Company in 1913 or 1914.

Being asked to state more in detail or specifically the nature of the complaints which were received principally from abroad in connection with the old Milton magneto, witness said:

"The first and most important complaint was that the engine failed to start on the magneto. That was the general complaint. * * * The next and more nearly accurate answer would be that the spark was not produced. And the third would be that there was some mechanical difficulty by which the magneto did not work properly. The next would be that the magneto rotor stuck, or that the magneto itself would shift on the supporting boss, or that the adjustment which had been existing originally had been distorted and could not be put back in form. That would be the whole story, practically."

Witness discussed all of these points with the New Works Committee, many times.

Being asked whether, in looking over the letters and reports of the Committee, witness had observed any specific complaint other than the fact that it was difficult to support such a heavy magneto or fasten it securely on the engine cylinder, witness said:

"I had nothing to do with any reports of committees. The magneto would be returned to the factory, sometimes on the engine and sometimes independent of the engine, and practically in refusal of payment for the engine by the purchaser; and I would be expected to either fix it, or show how it could not be fixed. That resulted in my letter."—The letter of the witness dated March 15, 1909, Plaintiff's Exhibit No. 1.

With reference to the letter Plaintiff's Exhibit No. 1, the witness further testified:

"Q Now, referring to this letter, where you say the magneto when in place as at present designed is not sufficiently rigid and is not sufficiently secured to stand up properly under conditions of continuous operation, what do you mean by that?

A That means, that refers entirely to the mechanical construction of the magneto proper and its support.

Q Now, what do you mean by its support? What do you include within that term?

A I mean its location and support upon the boss of the engine.

Q That was not sufficiently rigid?

A No, sir, that was not.

Q And that was the means of connection, was it not, between the magneto and the engine cylinder?

A That referred to its location distant from the plug, with adjustable parts to and from the magneto."

Witness recalled experiments or tests made with what was known as the Wattles magneto and fixed the approximate date of the tests by a letter dated February 16, 1909, written by witness to the Experimental Department of the Harvester

Company, the letter after submission to the witness being marked for identification, Defendants' Exhibit No. 1.

Witness testified regarding the Wattles magneto, as follows:

"Q Now, tell us what the trouble was, if any, with this Wattles magneto which you tested.

A The Wattles magneto was of a different principle entirely from this Milton, in that it was operated by the compression gases within the cylinder of the engine, and the trouble with the magneto was that on account of heat and difficulty of lubrication of the little plunger or piston which he had for such operation, it was unreliable and would not work continuously satisfactorily.

Q Was that all the trouble about it?

A That was the principal trouble.

Q I asked you, was—

A And the only one that was called to my attention.

Q How was that Wattles magneto fastened on the cylinder?

A It is a good while ago, but if I remember correctly—If my recollection is correct, the plug was removed completely from the engine, and the Wattles magneto was inserted in its place. The plunger of the Wattles magneto was inserted in place of the plug.

Q Is it not true, Mr. Waterman, as you now remember, that in that Wattles construction the magneto was mounted on the plug?

A No, it was not mounted on the plug. * * * No, sir. The plug, I am quite sure, was removed completely, and the Wattles magneto was inserted in the opening which was vacated by the plug; that is, the Wattles magneto was operated by the compression of the cylinder; a plunger was inserted in place of the plug.

Q Now, disregard for a moment the manner in which the compression of the engine was operated. Is it not a fact that in the Wattles magneto the generator proper and the plug, with its electrodes, were connected together in
321 one structure, and capable of being mounted on the engine as a whole, and taken off as a whole?

A Yes, sir. The Wattles magneto was a complete unit."

Witness shown another letter which he identified as having been written by him. Letter not marked for identification, nor date of it stated on record. Cross-examination in reference to the letter, the witness testified:

"Q Now that you have looked at that letter, Mr. Waterman, do you have some recollection as to what is mentioned in that letter?

A Yes, sir. That is a report of experiment work on that date.

Q That you reported in this letter? Now, I will call your attention to the next-to-the-last paragraph.

A Yes, sir. I remember that.

Q What did you mean there, by reference to the perfecting of the durability of the Wattles magneto?

A That means that Mr. Wattles personally was there at Milwaukee, working upon his magneto, and at the same time we were trying to overcome the difficulties of the magneto—of the Milton.

Q Well, what did you specifically refer to with respect to the durability of the Wattles magneto, which you were trying to perfect?

A On account of the heat, of the gases, the piston would become worn and leak, and the magneto would stop.

Q It had nothing to do, did it, with reference to the durability of the means by which the magneto proper and the plug were mounted on the cylinder?

A No, sir.

Q Now, with reference to the means of attaching the Milton magneto to the engine, which you were considering, what did that have reference to?

322 A Various means of support, had nothing to do with the general design of the magneto, at that time.

Q Did it not have to do, specifically, with the manner in which the magneto and the plug were to be secured to the engine cylinder?

A No, sir.

Q —As set forth in your letter of March 15th, Exhibit 1?"

Objection to line of examination as to Wattles and Wattles magneto being as not proper cross-examination. After discussion between court and counsel, witness excused with the understanding that he would be held available for examination by defendants as their own witness if desired by them.

WILLIAM L. CARLE called as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 36, residence, 851 Wellington Avenue, assistant to the head of the department of the International Harvester Company of America known as Stock Division of the Sales Department. Connected with that department for past eleven years. Particular work of the witness to assist in compiling copy for instruction pamphlets for setting up and operating the machines that the company handles. Stated that he was familiar with the records of the company relating to instruction sheets and pamphlets. Witness shown a pamphlet having a title reading in part "Directions for Attaching the Milton Magneto to the International Harvester Company's Horizontal Gasoline Engine," and identified it as a pamphlet printed in his department but stated that the copy was probably prepared at the Milwaukee Works of the company. Stated that the type for the pamphlet was set up on September 22, 1909, or a few days later, and that the pamphlets were received 323 from the print-shop on the 16th of October, 1909 and 1,000 of them sent to the Milwaukee Works on October 21, 1909, which was the first shipment with the exception that a few might have been distributed around to the heads of the departments in the Harvester Building a day or so before.

Pamphlet offered in evidence as Plaintiff's Exhibit No. 16.

Witness fixed the dates given by him by data printed on the title-page of the pamphlet in its upper left-hand corner, and by original records produced by him, which records were made at time of the transaction inquired about.

EDMUND J. KANE called as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 35, residence, 123 North Waller Avenue, Chicago; occupation mechanical engineer. Worked for Webster Manufacturing Company from sometime in the fall of 1908 until sometime in the fall of 1910. When he went to work for

the company it was called Webster Manufacturing Company. A little later it was changed to Hertz Electric Company, then it was changed to Webster Electric Company.

When the witness first went to work for the Webster Company he was employed by Mr. Webster as a demonstrator and salesman. The company was making magnetos at that time. The magneto was called a tri-polar construction with straight-bar magnets, and a coil on each pole-piece, on the center finger of the tri-polar construction. It was called the Milton magneto. Witness became acquainted with Mr. Milton. First met him either going to the Milwaukee Works of the International Harvester Company, or at the Works, not sure which. Milton was connected with the Webster Manufacturing Company when witness first went there, and was looked upon as the chief engineer. When witness 324 first went to the Webster Company he reported to Mr.

Webster and the latter turned him over to Mr. Milton, and Mr. Milton turned him over to Mr. Abbott Munn.

Asked to describe in a general way the form and style of the tri-polar magneto which the Webster Company was making when he first went to it, and the manner in which it was mounted for use, witness said:

"At that time our only, principal, customer, as I remember, was the International Harvester Company, and we were making the large square type of magneto. At the factory the Webster Manufacturing Company, they manufactured a magneto, bracket, springs, rotor and trip finger, and that was shipped up to Milwaukee to the International Harvester Company and they attached it to the engine."

Describing the method of attaching the magneto to the engine, witness said:

"The method of attaching it was by a small boss on the side of the cylinder. This boss was originally used to carry a small stud which supported a small roller, and the roller was for the purpose of supporting a trip rod which ran from an eccentric on the cam shaft of the engine and tripped a finger on the movable electrode of the igniter. The magneto was mounted on this small boss, and from what we called the trip finger of the magneto a rod or link extended over and engaged the finger of the movable electrode, and bolted on to the rear end of the cylinder was a small bracket that carried a lever. At the top end of the lever was a square rod that engaged the trip finger of the magneto. On the

bottom of this lever there was a connection that went to the eccentric on the cam shaft of the engine."

Being shown the piece of apparatus marked Plaintiff's

Exhibit 11, and asked to state what it was and what it 325 represented, witness said:

"Well, I see right off that this is the type of magneto that they were making at the Webster factory when I first went there; and the rest of this mechanism is, of course, the bracket that supports the magneto; and this portion here, that slid over the boss on the side of the cylinder and supported the magneto. This rod or link mechanism here connected with the finger on the movable electrode."

Witness stated that the movable electrode was missing from the exhibit.

Being shown the pamphlet marked Plaintiff's Exhibit 13, witness stated that it illustrated the method of attaching the magneto to the engine as he had endeavored to describe it. Witness first saw a pamphlet like Plaintiff's Exhibit 13 shortly after he started to work for the Webster Company—probably in 1908 or 1909. Witness stated that the large cut on the pamphlet showed the method of mounting or attaching the early magneto equipment to the engine. Witness saw the magnetos attached to engines in that manner and also went out to investigate the troubles and repaired magnetos attached in that manner. Regarding his duties in this connection, the witness stated that the magneto would be in trouble and the Webster factory would hear about it and send him out to fix it. That he made a number of trips but never devoted all of his time to that sort of work. It was sort of incidental. When the trouble came up if witness was available he would be sent out to attend to it.

Witness identified himself as the inventor named in the Kane patent No. 1,280,105 and stated that he invented the subject-matter of that patent. Asked to state the circumstances which led to the making of that invention he said:

326 "Well, as I said, I did a certain amount of field repair work on the old style magneto and attachments, and I also once in a while would go to the Milwaukee Works and find out how things were going up there, and I had a very strong opinion or idea—well, I had a very definite knowledge that they were very much dissatisfied with the type of attachment that they were using at that time. * * * I would go up and talk to their engineers and they would tell me—

The Court: Was it causing trouble?

A. Yes, causing a great deal of trouble. * * *

A. Of course, one of the great troubles with that old type of attachment was that it was a heavy weight supported on a very small boss which was never intended to support any such weight. * * *

A. That boss was originally intended to support a small roller, I would say, a couple of inches in diameter, and there was a half inch rod worked over the top of this roller and there was a very little strain on it.

Q. That was used for that purpose, was it, before the Milton machine was attached to the engine at all?

A. Yes, sir.

Q. It was something left over as a matter of prior engine design this boss? * * *

A. Yes."

Asked to state what other troubles if any were encountered with the original Milton machine, witness said:

"As I started to say, one of the great troubles was that mounting this heavy magneto on this little boss, it was not securely held in place, and after the engine had been operated a short time it would shake loose. That would put the relative timing of the spark in the magneto—the relative time that the points separate in the cylinder—it would spoil that relation, and of course the engine would not spark and 327 there was trouble. There was also a good deal of mechanism on this type of attachment, and if the man knew enough to keep his magneto tight on the engine, that is, if he should observe that it was loose and tighten it up and get the adjustment back again, why, the wear of all these various parts would put it out in another relation, so that on the whole we had a great deal of trouble with it."

Asked to state what he did and when he did it to overcome these troubles and difficulties, the witness said:

"Well, it is a little bit hard to say just definitely when the idea first came to me, but I have always placed it somewhere along in the early part of 1909. As I ran into these troubles I naturally sort of speculated and figured and tried to get a means or method of overcoming it, and really the first thing that I sort of observed was to take all that apparatus and cut out all this intermediate mechanism and bunch it all upon the plug there to make a good attachment.

* * *

The first thing that made me really start to work out some of the details of this device was that I saw a copy of that letter of Mr. Waterman's. I think it is the letter dated March 15th. And then, of course, I knew that things were very serious. And along sometime later than that I was upstairs, I think, on the fifth floor and Mr. Webster came up and asked me if I had any ideas or suggestions, or if there was anything that I could do to help him out in this situation. I told him I thought I could. That was, if I remember rightly, on a Saturday. I went home and the next day my father, Mr. Maurice Kane, sort of brought the proposition up and he said that the Harvester Company had pretty nearly come to a point that they were going to abandon the use of that magneto, unless somebody got busy and did something to overcome the trouble. I then sat down—I had a few drawing tools at home—and I made a sort of rough sketch which showed the magneto mounted on an extension of the igniter plug. This sketch I showed to my father when I 328 got it done, and we talked over it and we decided to take it down and show it to Mr. Webster. The next day I took it down and showed it to Mr. Webster, and Mr. Webster thought it a good idea. That same afternoon, if I remember rightly, we took it over to the general offices of the International Harvester Company, and showed it to Mr. Cavanaugh, who was assistant general manager in the Experimental Department. Mr. Cavanaugh looked at the sketch and said he thought we had made a real improvement, and to help us to put this thing actually in metal he immediately shipped us a six-horsepower engine. I then went back to the factory of the Webster Manufacturing Company and started to make a working drawing embodying this idea. This drawing was made a few days later and then we immediately started to make up various pieces to make that attachment to put on a six-horsepower engine."

Concerning the drawing referred to in the preceding answer, witness further testified:

"Q. I show you a paper, and ask you to state if you know what it is.

A. It was the original sketch that I made at home on that Sunday afternoon.

Q. What was the date upon which you made that sketch?

A. Well, it is dated April 11th. I am pretty sure that

is the date I made the sketch, because it is a habit of mine to date all these drawings.

The Court: 1909?

A. 1909.

Mr. Williams: Q. Is that the sketch which you have just referred to as having been shown first to your father, then later, I believe, to Mr. Webster, and then to Mr. Cavanaugh?

A. This is the sketch that I referred to.

The Court: When did you put the figures on?

A. I think I put them on at the same time.

329 Mr. Williams: Q. That is, you think you put on this legend 'E. J. Kane, April 11, 1909' on that date; put it on that paper on April 11, 1909?

A. Yes, I am quite sure. I think I did that at the suggestion of my father, if I remember rightly.

Q. Your father?

A. He told me 'Always date your drawings and sign them.' "

The paper identified by the witness offered in evidence as Plaintiff's Exhibit No. 17.

Being further examined, the witness testified:

"Q. I call your attention now to another paper, I will ask you to state what that is.

A. This is a second drawing that I referred to in my previous testimony, which I made at the Webster Manufacturing Company, and shows fully all of the details of the attachment.

Q. Now, can you say when it was that you made that drawing?

A. Well, there is a legend on there, on the corner, which says 'April 14, 1909.'

Q. Is that in your handwriting?

A. Well, it is in my hand-printing. It is printed.

Q. Do you know when that was that you put that date on that drawing?

A. I would say that it was at that time.

Q. On that date?

A. On that date, April 14, 1909.

Q. Now, on this drawing which you have just identified as having been made at the Webster plant by you, on or about April 14, 1909, there are numerals in red lead-pencil. Were those figures put on the drawing by you at that time, or

can you explain how or when they came to be upon that drawing?

A. Those figures were not put on there by me at that time. I put those figures on when we were taking the testimony for the Milton interference.

330 Q. In connection with your testimony as given at that time?

A. I put the figures on so that we could describe those pieces of the apparatus and tell what the various parts were."

The drawing last identified by the witness offered in evidence as Plaintiff's Exhibit No. 18.

Being further examined, the witness testified:

"Q. I call your attention now to a piece of apparatus marked Plaintiff's Exhibit 12, and ask you to say if you know what that is.

A. Well, this is the Milton magneto attachment as put, I would say, on the International Harvester Company horizontal engine.

Q. When was it that you first saw a piece of apparatus like that, or substantially like this Exhibit 12?

A. Well, I saw a piece of apparatus very much like this sometime in the latter part of April or the first part of May, 1909.

Q. Did you see that made, or have anything to do with the making of it, or what were the circumstances?

A. Well, I made the drawings for the pieces and Mr. Abbott Munn, foreman of the Magneto Department at that time, he made most of the pieces.

Q. Whose Magneto Department?

A. Of the Milton Magneto Department.

Q. For the Webster?

A. The Webster Manufacturing Company.

Q. Did you have anything to do with the construction of that yourself?

A. Not very much, no.

Q. Did you see the work in progress?

A. I watched the work in progress but I didn't do very much of the manual work on it.

Q. You said that the International Harvester Company had sent a six-horsepower engine through Mr. Cavanaugh in order that tests might be made. Were tests made eventually of that engine?

331 A. As I said, sometime in the latter part of April

or the first part of May we completed a device very similar to this and we put it on that engine and we proceeded to make some tests.

Q. How was the test made; you saw the test, did you?

A. Well, I really ran the test.

Q. What did you do in making those tests?

A. Well, the tests didn't amount to very much, because we put this attachment on an engine, and I think the first or second time we turned the engine over it started and ran, and all the parts, so far as we could tell at that time, operated perfectly.

Q. Did the engine keep on running?

A. Oh, yes, it kept on running, and the mechanism for cutting out and rendering the magneto idle, that all worked; the whole thing seemed to be a good job.

Q. Now, I notice that there are some slight differences apparently between some of the sizes or between size forms of some of the parts as between Plaintiff's Exhibit 18, drawing, and this Plaintiff's Exhibit 12, apparatus. Can you say whether the first piece of equipment of this general character conforms more nearly with the drawing or with this Exhibit 12, sample?

A. There were some slight differences. The first attachment that we ever made up followed this drawing very closely. When the engineers at the Milwaukee Works of the International Harvester Company started to make up plugs for a full line of engines they put in some slight changes.

Q. Won't you state what those slight differences were as between the drawing Exhibit 18 and the apparatus Exhibit 12?

A. Well, the main difference between this piece of apparatus and this drawing is this small lever, for instance (indicating). This is used to lift the magneto push-rod out of engagement with the trip-finger. The original apparatus that we took up to Milwaukee, in that it was accomplished a little bit differently. This lever was not here, but there was a small connection, a small casting on the exhaust rod, bolted to the exhaust rod, and there was a little roller on the top of that, and on the bottom of the magneto push-rod was a wedge, so that when the exhaust rod was held forward on the idle strokes of the engine, the roller came under the wedge and lifted the magneto push-rod out of engagement with the trip-finger. Outside possibly

of some small differences in the thickness of the metal and that sort of thing, that is the only difference between this piece of apparatus and that drawing.

Q. Have you got, or do you know whether there has been preserved in any way, that original machine which was made in conformity with Plaintiff's Exhibit 18, drawing? Do you know what became of the original model?

A. I took the original machine that was made from this drawing to the Milwaukee Works of the International Harvester Company.

Q. What did you do with it there?

A. I gave it to Mr. Waterman.

Q. Did you see it at all after that?

A. If I recollect rightly Mr. Waterman turned it over to some of his assistants, and they put it on an engine. In the meantime Mr. Waterman, I think, took us around and showed us some of the cream separators and that sort of stuff in the factory, and after we saw those things we went out to the testing floor, I think it was, and we saw the magneto in operation on the engine.

Q. Who were present at the time you delivered this first magneto to Mr. Waterman, aside from yourself and him?

A. My father, Mr. Maurice Kane.

Q. Was he in business there at Milwaukee, or how did he come to be present?

A. At that time my father was general manager of the Experimental Department of the International Harvester 333 Company and when I told him I was going to take this new improved attachment up to the Milwaukee Works he said he would go up with me, of which I was very glad.

Q. What was said at the time of your interview with Mr. Waterman, at which you showed him for the first time this machine that you have described?

A. Well, we went into Mr. Waterman's office and I laid the machine on his desk and Mr. Waterman looked it over. He said 'Well, I think you finally have done something.' He may have said more, but I don't remember just exactly all that he said. I know that he pronounced this apparatus a good job and was very much pleased with it.

Q. By the way, was it that same day, or some other day, that you saw it put on the engine there at the Milwaukee Works?

A. I did not see it put on the engine. He gave it to his assistants and they took it out and put it on the engine.

Q. And you saw it after it was on the engine?

A. Afterwards we went out and looked at it.

Q. That is the same day?

A. That is the same day.

Q. Did you see the engine run there with this ignition equipment on it?

A. The engine was running.

Q. How long did you stay there in Milwaukee in connection with this test?

A. We came back to Chicago that same night.

Q. I call your attention now to the paper dated March 15, 1909 marked Plaintiff's Exhibit 1, and I will ask you whether you recognize that paper.

A. I don't think I ever saw this paper before, but I am very sure that I have seen a copy of this.

334 Q. When did you first see a copy of that paper?

A. Well, I cannot say exactly, but it was sometime, I would say, shortly after it was written.

Q. By shortly, do you mean within a week or month or year?

A. Within probably a week or ten days.

Q. Now, you referred during your testimony to having seen a letter of March 15th. How does this compare with the letter which you then referred to as having been seen by you?

A. As near as I can tell the letter that I saw was a copy of this.

Q. Now, following this visit to Milwaukee, when you first submitted this invention of yours to Mr. Waterman, did you go again to Milwaukee in the immediate future, in connection with any tests of that equipment?

A. I cannot place any definite visit, to say that I went up at such and such a time; but I used to visit the Milwaukee Works quite frequently. It was kind of my business after I went up the first time to keep in touch with the progress of the Milwaukee Works in the making of this new attachment, and there is no doubt in my mind that I did go up there every once in a while to see what they were doing.

Q. What was the further history of this invention of yours, after having submitted it, as you say, to Mr. Water-

man, and it having a test there at the Harvester plant in Milwaukee? What followed that in a general way?

A. Well, the next development was, of course, the making of the magneto attachment to put on the six-horsepower engine, to replace the one that I had taken to Milwaukee. Shortly after that I went over to the Deering Works and I made up one of these attachments for a tractor engine. This differed a little bit from what we called the standard attachment at that time, in that the tractor engine was a variable-speed engine, and I made a sort of double eccentric arrangement to advance and retard the spark of the magneto as the speed of the engine would vary.

Q. What followed insofar as the Harvester Company was concerned, after the thing went on test up there?

A. Well, after the thing went on test the next thing that I heard of was, I think, that I saw a report by Mr. Waterman on this attachment, and if I remember rightly it was quite favorable to the attachment. A little later I heard that they intended to adopt it as an attachment, discard the old means of attaching the magneto to the post—

Mr. Bulkley: I object to what he heard.

Mr. Williams: From whom did you hear those things?

The Court: That may be stricken out, what he heard about it.

Mr. Williams: Let me ask you first what followed that? What I want to get at is the history of this invention of yours, following its submission to the company. Now, just in a general way state all that followed.

A. After we submitted it to the Milwaukee Works, as I said, I saw a copy of the report that was quite favorable to the magneto, and a little bit later I think we shipped up about ten magnetos to the Harvester Company at Milwaukee. They said they wanted to put them on an attachment similar to the one I had taken up there for a general test. Shortly after that we started to make this small type of magneto with the circular pole-pieces, and started to ship a large number of them up to the Milwaukee Works. As near as I can recollect we started to ship it up there some time in August or September, 1909.

Q. In what quantities, or approximately what quantities?

A. I think possibly 25 or 30 a day.

Q. Now, what followed as to the commercial use of this device after you began to ship it in these quantities to

336 the International Harvester Company in August or September, 1909. Did you continue to ship it or did you discontinue?

A. We shipped them, continued to ship.

Q. For how long?

A. As long as I was with the Webster Manufacturing Company they continued to ship this type of magneto.

Q. When was it you severed your connection with the company?

A. It was in September, 1910.

Q. I call your attention to the paper which has been marked Plaintiff's Exhibit 4, and ask you to state if you can what that is.

A. This is the original letter of which I saw the copy shortly after I took the first magneto attachment up to the Milwaukee Works.

Q. And is that the favorable report to which you referred earlier in your testimony as having seen a copy of it?

A. Yes this is that report that I referred to.

Q. I call your attention to a photograph which has been marked Plaintiff's Exhibit 5, and I will ask you whether you recognize that, and, if so, to explain what you know about it.

A. This photograph as near as I can tell, is a photograph of the first magneto that we attached to the six-horsepower horizontal engine at the Webster Company. So far as I know there was only one magneto, possibly two, with a means of rendering the magneto idle on the idle strokes of the engine, in which the means was separate from the magneto. I see that in this photograph.

Q. Now, this first drawing of yours dated April 11, 1909, as I understand from your testimony, was shown by you to your father and to Mr. Webster, and to Mr. Cavanaugh. Now, were there any others, so far as you recall, who saw that drawing at or about the time that it was made, or within a few days thereafter?

337 A. Mr. Cheville came up to look at it.

Q. Now, this more detailed drawing dated April 14, 1909, can you say who saw that at or about the time it was made?

A. Well, at the time it was made Mr. Munn saw it. In fact he watched me from time to time as I worked out the details of the mechanism. Right after the drawing was com-

pleted and in the shape you see it now I took it down and showed it to Mr. Webster. Of course, it was set up on my table on the 5th floor of the Webster Manufacturing Company and anybody could have come in and looked at it.

Q. Did you discuss the drawing with anyone other than Munn during the time it was being made, or on its completion?

A. At the time I was making the drawing Mr. Munn was the only one I spoke to at all about the idea. After the drawing was made and I took it down to Mr. Webster he asked me if I showed it to Mr. Milton, and I said that I didn't think Mr. Milton had seen it, and he said 'You better take it over and show it to him,' and if I remember rightly I took it over then and showed it to Mr. Milton.

Q. Do you know what work Mr. Milton was engaged in principally or exclusively at about the date of this drawing?

A. About the time I worked on this drawing Mr. Milton was engaged working largely on the high tension magneto.

Q. Did you see him frequently at that high tension work at about this period? Do you know of your own knowledge what he was doing?

A. No, I would not say that positively.

Q. Did you see him at work, ever, during this period, say, in April, 1909?

338 A. I used to see Mr. Milton once in a while, up on the 5th floor where I was located, and he would take a high tension magneto which was generally made by Mr. Munn and he would run tests on it. From that I assumed that he was working largely on the high tension magneto stuff.

Q. Will you look at this pamphlet, marked Plaintiff's Exhibit 16, and state whether you recognize that? If so, what is it?

A. This paper you have handed to me, marked Plaintiff's Exhibit 16, I recognize as an instruction paper for attaching the Milton magneto to the International Harvester engine.

Q. When did you see a pamphlet identical with this for the first time?

A. I saw pamphlets identical with this one for the first time shortly after the printer's proof of this thing were got out.

Q. Did you see the proof before you saw the finished pamphlet?

A. Well, I went down to look over this thing—I went down to the Harvester Company one day to look over this

thing with them, to read it through to see that it was correct so far as the attaching and the general descriptive matter that related to the magneto was concerned, and they wanted to get my opinion on it, and I looked it through with Mr. Chelius.

Q. That was before the pamphlet was actually published then?

A. I would say yes.

Q. When was it you first saw the pamphlet in this final form for the first time; approximately when?

A. That was shortly after they were published.

Q. Can you state approximately when that was?

A. Some time in the fall or early winter of 1909.

Q. Now, how does the ignition mechanism as illustrated and described in this pamphlet, Plaintiff's Exhibit 16, compare with the ignition equipment which you have described as having been made following your invention, and as tested at Chicago and at the Milwaukee Works of the Harvester Company?

A. The only difference between the attachment described in the pamphlet there from the one we made at Chicago and the one that I took to Milwaukee is in the means of rendering the magneto inoperative on the idle strokes of the engine. On the one that I took to Milwaukee that means was not mounted on the magneto bracket proper. It was separate from it. But after the engineers at Milwaukee looked over the thing they thought it made a little simpler attachment to put a small lever for raising the magneto push-rod out of engagement with the trip-finger on the bracket itself.

Q. Won't you apply a reference-letter, "A" on illustration No. 4 or 5, or both, on this pamphlet, to the part to which you say differs in these cuts from the form which you tested in Milwaukee and Chicago for the first time? You have marked that lever now with a capital "A" in those cuts?

A. Yes, sir.

Q. Now, aside from the difference as to the form or location of that mechanism which you have marked "A" on those cuts, how did the apparatus which you first tested in Chicago and Milwaukee compare with that illustrated in this pamphlet, Exhibit 16?

A. Well, it was practically the same, except, maybe, for some small difference in the dimension of the parts and possibly the material that was used in some places. If I remem-

ber rightly the first trip-finger that we made for an attachment of this kind we made out of a forging because we were in a hurry, but after they got the apparatus up to Milwaukee and we decided to make them in quantities we made that trip-finger out of malleable iron.

Q. I call your attention to Plaintiff's Exhibit 14 and ask you whether you recognize that, and if so, to state what that is.

A. This mechanism you have handed to me I recognize as an igniter plug and magneto bracket as used on the 340 International Harvester Company horizontal engine.

Q. Can you say whether or not that is a commercial product, or whether that is a hand made preliminary sample?

A. I would say that this is a commercial product.

Q. Wherein did the first device which you made, as you say, following this drawing of April 14, 1909, differ, so far as the integral plug and bracket are concerned from this apparatus marked Plaintiff's Exhibit 14?

A. The only difference between this bracket and the one that I took up to the Milwaukee works, so far as the integral plug and bracket is concerned, is that this one is a little lighter; there is not quite so much metal in this one as in the one that I took up there.

Q. Look at Plaintiff's Exhibit 14-A, and state, if you can, what it is, and compare it, if you can, with the apparatus which was first made and taken to Milwaukee for this test.

A. This piece you have handed me is a trip-finger, and the only difference between this one and the one that we took up to Milwaukee was that this is made, I would say, out of malleable iron while the one we took up to Milwaukee was a forging.

Q. Can you say how it was that this unfavorable report of Mr. Waterman's dated March 15, 1909 first came to your attention? Do you know who called your attention to the copy of that report which you saw?

A. I think I first saw a copy of that report—I think a copy of that report was first brought to me by my father. I think that was the first time that I saw it.

Q. Now, when you talked to Mr. Webster about the troubles which were being met with in the old form of Milton machine what did he say and what did you say?

A. Mr. Webster merely requested me to try and help him a little bit.

Mr. Bulkley: May I ask that he state definitely what
341 Mr. Webster said to him and what he said to Mr. Webster?

The Court: The substance of it.

A I was up on the 5th floor and Mr. Webster simply came into my little place in the Stock Room, a sort of caged off place up there, and he spoke something about the seriousness of the trouble they were having, and he seemed greatly worried and he said 'Kane, you have had a great deal of experience with these things. Can't you give us some idea,
342 or help us a little bit on this proposition?', and I said

I thought I could, that was about all, as I remember it, that was said.

Mr. Williams: Q. Perhaps, Mr. Kane, you had best refer to this drawing of yours bearing date April 14, 1909, and making use, if you will and if you find it convenient, of the red letters there, just state what the several parts are, indicating so far as you can the mode of operation of the mechanism there shown.

A. On this drawing No. 1 is the engine cylinder. No. 2 is the igniter plug with the extension integral with the plug. No. 3. Mounted on No. 3 is the magneto—I was going to give the number, but I don't see it. No. 4 is the trip finger. No. 5 is the rotor shaft. No. 6 are the springs which engage the trip-finger on one end, and two studs in the pole-piece No. 7 on the other. No. 8 is a finger on the movable electrode No. 9. No. 10 is the adjusting screw in the trip-finger No. 8. No. 11 is the magneto push-rod. No. 12 is a wedge-shaped cam mounted on push-rod No. 11. No. 13 is a roller which supports the push-rod No. 11. No. 14 is a small shaft carrying roller No. 13. No. 15 is a small handle on the other end of shaft No. 14. No. 16 are the magneto coil. No. 17 is the magneto rotor. I might add that No. 14 in addition to being the shaft had an eccentric motion.

* * * * *

Q. Now, Mr. Kane, after this machine or your invention which you have described had been approved and adopted commercially by the International Harvester Company, what was said and done relative to the matter of procuring protection on that invention?

A. Some time after I made the first machine, I would say probably a couple of months, Mr. T. K. Webster came up to the 5th floor where I was working at the Webster Company,

and he talked the matter over with me. He told me that
 343 he had discussed the matter of the patentability of this
 device with his patent attorneys—his engineers—and
 that they were of the opinion that there wasn't anything new
 or patentable in the attachment.

Q. Were you satisfied with that opinion? What did you
 do?

A. Well, I didn't think very much about the matter just
 at that time. A little bit later my father, Mr. Maurice Kane,
 he asked me what the Webster Manufacturing Company
 were doing about getting the patent on this attachment, and
 then I repeated to him what Mr. Webster had told me. He
 said—well, he said 'You had better go down and see Sprinkle'
 —of Brown, Nissen, and I think it was Hopkins at that time.
 He said 'You go down to see them, and you have Sprinkle
 make out a patent application for this device.' He said
 'I do not know whether there is anything patentable in it or
 not; but,' he said, 'you at least will get some patent experi-
 ence and you ought to have some information along that line

Q. Who met the expenses of the patent application when
 it was filed.

A. I did.

Q. Personally?

A. Personally.

Q. Did you say anything to the Webster Company, to
 T. K. Webster or anyone connected with it, about the fact
 that you had filed this application through Mr. Sprinkle?

A. No, sir, I did not.

Q. How old were you Mr. Kane, when you went into the
 employ of the Webster Company?

A. I was 25 years old.

Q. What mechanical or other business or manufacturing
 experience had you had previous to going into the employ
 of the Webster Company?

A. Why, we have a work shop down in our basement,
 and we have had for perhaps twenty years. We have got

quite a few mechanical tools down there and have made everything from a small gas engine to a big cruising motor boat.

Q. Who? When you say 'we' made everything from a motor boat to cruisers?

A. Myself and my brothers. I also spent—am a graduate of the Lewis Institute, a technical school in Chicago. I got a degree of Mechanical Engineer from them in 1907. I also spent one year with the Smurr & Kamen Machine Tool Company. They were located at that time on South Clinton Street. They made screw machines and drill presses, wire working machinery; built special machinery. After that I entered the employ of the Webster Manufacturing Company.

Q. How long a time elapsed after your graduation from the Lewis Institute before you accepted employment with the Webster Company?

A. I graduated from the Lewis Institute in 1907. I went to work for the Webster Electric Company in 1908.

Q. When was it in 1908 that you went into the employ of the Webster Company?

A. Sometime in October.

Q. Now, what did you do in connection with the employ with this Webster Company when you first entered its employ? What were your duties?

A. I was placed under the direction of Abbot Munn, and under his direction was put through all the processes of making the various parts and assembling the magnetos. The idea was to thoroughly familiarize me with the magneto and how it was made. I wound coils, I painted magnetos, I assembled magnetos, I did work on the drill press, and in fact I learned how to do pretty near all the operations that were connected with the manufacture of the magneto.

Q. Who was it put you under the direction of Mr. Munn, as you say?

A. Mr. Milton.

Q. Did you see him first when you came into the employ of the Webster Company?

A. No, sir. I saw Mr. T. K. Webster.

Q. And how soon after you entered the employ of the Webster Company did you see Mr. Milton?

A. I think it was the same day.

Q. What did he say to you when he turned you over, as you testified on the direct, to Mr. Munn?

A. I think he introduced me to Mr. Munn and Told Mr. Munn that he wanted me to learn all about the manufacture of the magnetos.

Q. You say that Mr. Milton was known about the business of the Webster Electric Company as the Chief Engineer, is that right?

A. Yes, sir.

Q. Well, what authority did he have as chief engineer in connection with the business of that corporation?

A. Well, he seemed to have most of the authority.

Q. That is, he was the superior to whom you had to ultimately refer matters, was he not?

A. He was the superior to whom I at first referred matters.

346 Q. Well, when did it come about that he ceased to be your superior to whom you did refer matters?

A. Well, at times Mr. Webster would come up and give me orders direct after I had been there sometime.

Q. How long had you been there when Mr. Webster first came around and gave you orders direct?

A. I should say possibly three or four months.

Q. Well, now, what was the first thing in connection with the business of the company that Mr. Webster gave you orders direct on, if you now remember?

A. As near as I can remember, it related to some of the details of a trip I was to make in the interests of the Webster Company.

Q. Well, now, I am going to ask you when it was that you first proceeded to act on your own initiative with regard to the mechanical department of the work of the company, and not details of trips. When was it you first acted on your own initiative with reference to such a matter as that after you had entered the employ of the Webster Company?

A. Well, after I stopped working for Mr. Munn and worked for Mr. Webster and Mr. Milton I did very little or no work on the mechanical details at the factory.

Q. How long would you say you were working in and about those things which would give you a knowledge of how to assemble the magnetos, and in connection with that to learn the mechanical construction? How long a time were you doing that after you entered the employ?

A. I should say three months.

Q. And during that period you were under Mr. Munn, as I understand?

A. Yes, sir.

347 Q. Had been turned over to him by Mr. Milton?

A. I was, sir.

Q. Were you turned back to Mr. Milton again after that?

A. Well, I sort of wandered around loose after that for awhile.

Q. Well, who was your superior after the end of that three months and to whom did you look for your orders and instructions after you were around loose, as you say?

A. I looked to either Mr. Milton or Mr. Webster.

Q. And what were you doing when you were working around loose, after the expiration of this three months, when you were released from the superior authority of Mr. Munn?

A. Well, sometimes I would help Mr. Munn a little bit.

Q. Now, how long did that condition of affairs exist when you were, as you say, working around loose under the instructions of Mr. Webster and Mr. Milton?

A. That condition of affairs existed until after I designed the integral plug construction here.

Q. Well, what time was that, Mr. Kane? I ask if you know what time that was. You know when the integral plug—

A. That was sometime in April—

Q. —as you say, was designed by you. In what year?

A. 1909.

Q. Now, will you give me the time?

A. Some time in April 1909, sir.

Q. Then from and after three months, during which you were with Mr. Munn, up to the time when, as you say, you designed this apparatus, which was in April, 1909, you were under the instructions and supervision of Mr. Milton and Mr. Webster, is that correct?

A. Yes, sir.

348 Q. What were you doing during that period?

A. Well, I made several trips out into the country.

Q. Now, what were the nature of the instructions which you got from Mr. T. K. Webster, generally speaking?

A. Well, of course, we were trying to introduce and make popular the Milton magneto in this country, and I went out and visited the various general agencies of the International Harvester Company with that in view; and the instructions

I got from Mr. Milton and Mr. Webster related to the way I should endeavor to handle the proposition when I got out and interviewed the general agents.

Q. Now, did you get any instructions from Mr. Milton at any time during that period, after you had retired from the supervision of Mr. Munn, with respect to any mechanical matters connected with the business of the Webster Company?

A. No, sir, I did not.

Q. Then, I understand, Mr. Kane, that during this period when you were engaged in going about and drumming up business and meeting the agents throughout the territory that you got your instructions what to do, and advice and suggestions concerning those matters, from Mr. Milton and from Mr. Webster, is that right?

A. Yes, sir.

Q. And that during that period and up to the time when you took hold of the development of this apparatus, as you say you did, you had not been doing anything of a mechanical nature in connection with the business of the company, is that right?

A. Very little.

Q. Very little. Well, you say you had been doing a little. What was that little, if any?

A. Mr. Milton was doing some work on a magneto attachment of his own, and when he would make up an attachment he thought was an improvement over the old attachment, 349 why, at times he would send me up to Milwaukee with it.

Q. How often did that occur, when you went to Milwaukee at the instance of Mr. Milton with reference to this attachment which you say he, Milton, was working upon?

A. Probably a couple of times.

Q. What did he send you up there for?

A. Sent me up there to take it to the Works to show it to them.

Q. And did you take it to the Works and show it to them?

A. Yes, sir, I did.

Q. At Milwaukee?

A. At Milwaukee.

Q. Now, what was the nature of this device or attachment or apparatus that you say Milton was working upon that you took up there to show to the Milwaukee people?

A. Well, it is a little bit different from anything we have got here. It was a magneto mounted on the boss, on the side of the cylinder, where this old type was mounted. There was a connection from the magneto to the plug, which was separate. It differed from this attachment, however, mainly in the fact that the lever, which was mounted on the back of the cylinder, was eliminated, and Mr. Milton come out from the eccentric on the exhaust shaft to a link which was hung on one side of the bracket, magneto bracket. There was a trip on this rod and this trip engaged a magneto trip which hung downward from the magneto itself.

Q. What was this apparatus designed to do? What was it for?

A. Designed to furnish a spark for a gas engine.

Q. To whom did you show it when you got to Milwaukee on the two occasions when you went there with it?

A. I showed it to a man named Andrews.

350 Q. Do you know who Andrews was, what his employment was, and with whom he was connected?

A. Andrews, I understood, was the chief draftsman for the Milwaukee Works of the International Harvester Company.

Q. Did you explain it to him or say anything to him about it, or simply deliver it to him?

A. I delivered it to him and explained it to him.

Q. And explained to him how it worked?

A. Yes, sir.

Q. Did you have any instructions from Mr. Milton, or anybody else, to deliver it to Andrews particularly?

A. No, sir, I did not.

Q. How did you happen to deliver it to Andrews instead of to somebody else?

A. Well, I went up to the Milwaukee Works and went to the man at the door, and I told him what I wanted and told him what I was up there to do, and eventually I got hold of Mr. Andrews.

Q. All right. What did you tell him you were up there to do?

A. I told him I had brought a new magneto attachment from the Webster Manufacturing Company.

Q. Now, did this magneto attachment have anything to do with the generator or magneto proper, and, if so, in what respect? The electrical phases or features of the magneto

itself, what did this attachment have to do with that, if anything?

A. The electrical phases or features of the magneto itself were very much similar to the electrical phases of the previous type.

Q. Now, on the occasion of your second visit up there, or trip, as you say, who did you see then?

A. I saw Mr. Andrews.

351 Q. And what—the same man?

A. The same man.

Q. And what did you show him then?

A. Well, I had a little different type of magneto at that time.

Q. Well, what was the difference?

A. Well, instead of having one link attached to the magneto bracket on which was supported one end of the magneto push rod, we put in two links and a short connecting link or bar on which we hung the magneto trip, and then from the link that was nearest the flywheels of the engine we connected our rod which fitted into the magneto eccentric.

Q. Did you have anything more to do with these attachments, these two that you spoke of, except to take them down there and show them to Andrews at the request of Mr. Milton? Did you have anything more to do with these things than that?

A. Very little more.

Q. Well, what little more, if anything, Mr. Kane, if you remember?

A. I possibly showed Mr. Andrews how they went on the engine.

Q. Did you have anything to do in assisting Mr. Milton in the development of these devices or this apparatus?

A. No, I did not.

Q. Had you ever seen them before he delivered them into your hands on the respective occasions you made the trips to Milwaukee; had you ever seen them before that, either one of them?

A. Yes, sir.

Q. Where did you see them?

A. I saw them in the factory of the Webster Manufacturing Company.

352 Q. Did Mr. Milton explain them to you or tell you about them then?

A. No, sir, he did not.

Q. He did, however, explain to you how they were worked, and what they were for, just previous to sending you down to Milwaukee to take them there to show them to the International Harvester Company, didn't he?

A. No, sir, he did not.

Q. How did you learn about it?

A. They put these magnetos on an engine, and, if I recollect rightly, this engine was down on the—

Q. Who? Who, may I ask, Mr. Kane?

A. Somebody in the factory.

Q. In the Webster factory?

A. In the Webster factory. I couldn't tell you exactly the workmen; who put the magneto on the engine, and the engine, if I recollect rightly, was down on the test floor of the Webster Manufacturing Company. They made gas engines of their own at that time. And there was an old man in charge there, and he showed me what there was to be known about the magneto.

Q. What did Mr. Milton tell you to do when he gave you these attachments and sent you to Milwaukee with them? What were his instructions to you?

A. He told me to take them up to Milwaukee and, if possible, have them put them on an engine for test.

Q. Now, after you had served your three months' apprenticeship in familiarizing yourself with the magneto as it was then constructed, under Mr. Munn, as you say, did you have anything else to do with the mechanical affairs of the corporation, except that which you have just recited, up to the time when you got up, as you say, this combined plug and magneto?

353 A. I had a little, yes.

Q. Well, what was the little?

A. There was an old drawing board upon the fifth floor where I was located with Mr. Munn, and sometimes Mr. Munn had a little sketch made of some sort of little piece of machinery they were going to make, and I used to make it for him. If he waited until he could get the main engineering department downstairs to make this little piece or little sketch for him, why, it would take a good deal of time, and once in a while I would do it for him.

Q. What did these sketches which you made for Mr.

Munn,—what did they relate to? What was the character of the sketches?

A. Well, sometimes they would relate to some piece Mr. Munn wanted to put on a magneto, or sometimes they would relate to some piece of a jig or tool, or some little thing like that, they wanted to make up.

Q. Were you out considerably from the premises of the factory, out of town, going around and seeing these agents quite a good deal from time to time?

A. Yes, sir, I think I was.

Q. And you were going out of town on these general duties during the year 1909, were you not?

A. Yes, sir.

Q. And you frequently went out of town?

A. Yes, sir.

Q. And that was the burden of your work, wasn't it, to go out of town, to go around to see these agents and others to demonstrate this apparatus?

A. Yes, sir.

Q. And to straighten things out as best you could, and to create an interest in the product?

A. Yes, sir.

354 Q. Now, when you had a talk with Mr. Webster, as you say, did he say that he had enlisted the efforts of anybody else except you to help him out?

A. You mean on this work?

Q. On this invention which you are now claiming as having been made by you?

A. You mean the time Mr. Webster—

Q. Let me put this to you, put a more definite and clearer question. Mr. Kane, you have testified, as I understand it, that Mr. Webster came to you and said that he was having trouble with the form of magneto which was then being made and sold, and that the Harvester Company wouldn't have it any more, and that you had got to do something, and he asked you to help him out, is that right?

A. Yes, sir.

Q. Yes. Now, when was that? What month of 1909 was that when you had that conversation with Mr. Webster?

A. That was in April, 1909.

Q. Well, what part of the month, as near as you can remember?

A. As near as I can remember it, it was the day before I made this drawing.

Q. The day before?

A. Yes, sir.

Q. Did he tell you that he had asked or enlisted the help of somebody else other than you?

A. No, sir, he did not.

Q. Didn't say anything about that to you at all?

A. No, sir.

Q. Now, you made this drawing how soon after you had that conversation with Mr. Webster?

A. I made it the next day.

355 Q. In the forenoon or in the afternoon of the next day?

A. To the best of my recollection, in the afternoon.

Q. And when did you show it to Mr. Webster?

A. I showed it to Mr. Webster the following morning.

Q. Did you show it to Mr. Milton?

A. I do not think so.

Q. Do you know whether you did or not show this drawing to Mr. Milton?

A. No, sir, I did not show it to Mr. Milton.

Q. You were acting under his instructions at that time, weren't you, when you made this thing, as you say?

A. No, sir, I was acting under Mr. Webster's instructions.

Q. Let me go back a little. When was it you ceased to act under Mr. Milton's instructions and acted only on the instructions of Mr. Webster?

A. After I made this drawing.

Q. How soon after you made the drawing did you change your allegiance from Mr. Milton to Mr. Webster? How soon after did the relation which you had therefore had to Mr. Milton as your superior cease and you came under the supervision entirely of Mr. Webster, as you now say? How soon after you made this drawing?

A. Shortly after I made this drawing Mr. Webster had a little talk with me and said he thought he had found the right man on the low tension business, as Mr. Milton was busy working on the high tension business; and after that I didn't consider I was under Mr. Milton's instructions.

Q. Didn't you think Mr. Milton might be interested in

your invention, and it would be a good thing to show it to him as soon as you had made it, or shortly thereafter?

A. No, sir, I didn't think about that.

Q. Why not? Don't you think that would have been
356 a natural thing to do?

A. Well, Mr. Webster was the big man in the company, in my estimation.

Q. He didn't tell you not to show it to Milton, did he?

A. No, sir, he did not.

Q. Well, now, Mr. Kane, there wasn't any strained relations between you and Mr. Milton, was there, at that time?

A. Well, there was a little bit of feeling between the department upstairs and the department downstairs, I would say.

Q. What was the character of that feeling, as you say?

A. Well, I do not recollect just exactly what happened, but I know we were a little bit at outs.

Q. I am asking you as to your feeling and attitude toward Mr. Milton at that time, and not as to the attitude and feeling existing between different departments.

A. My attitude toward Mr. Milton, I think, went back to this fact; on a trip sometime previous to this time—it was quite a long trip. I went up North to Minneapolis, and then swung down to Des Moines, and I think to Dubuque a lot of those agencies out there; and Mr. Milton was to furnish me with funds. I didn't start out with very much money. The funds didn't come, and finally I got as far as, I think it was Lincoln, and I was stranded there with practically no money on the first long trip I had made from home, and I resented that very much.

Q. You knew the company was kind of hard up at that time, didn't you?

A. Yes, sir, I did.

Q. And you charged that up to Mr. Milton personally, did you, as though he was the one who had subjected you to that indignity, did you?

A. Yes, sir, I did.

Q. And you charged that up to Mr. Milton personally,
357 did you, as though he was the one who had subjected you to that indignity, did you?

A. Yes, sir, because he was the man that said he would forward the money to me, and it was up to him to do it.

Q. Didn't you know he was speaking for the company?

Did you think he was going to get it out of his own pocket and forward it to you?

A. I thought of only one thing; I was stranded in Lincoln with no money, and that bothered me a good deal.

Q. It was that condition of things, was it, that brought about a somewhat strained relation between you and Mr. Milton, is that right?

A. That was undoubtedly part of it.

Q. What was the other part?

A. Well, I do not know. At times we didn't agree; little strained relations, that is all. Sometimes two people don't always get along.

Q. But that don't always and necessarily involve strained relations, does it?

A. No, sir, not always.

Q. If we don't agree, we sometimes peacefully disagree, isn't that true?

A. Yes, sir.

Q. You knew Mr. Milton had had a good deal to do with the development of this apparatus, as chief engineer of the company, and up to the time that you made that drawing as your superior from whom you received instruction? You knew he had had a good deal to do with the development as far as it had then progressed, good, bad or indifferent, isn't that true?

A. Yes, sir.

Q. Well, don't you think it would have been quite natural to have shown to him what you had devised along that line?

358 A. I do not know whether it was natural or not. I am pretty sure I didn't.

Q. Now, Mr. Kane, did you at any time talk with him about this?

A. About this one (indicating)?

Q. Oh, this invention which you say you made at that time.

A. I talked with him about this drawing after I made it (indicating).

Q. How soon after?

A. I talked with him right after I showed it to Mr. Webster.

Q. What was the substance of that conversation?

A. Why, I took this drawing to him, and, if I recollect

rightly, he was sitting at his desk down on the main floor in the general offices of the Webster factory, and I spread it out before him, and I think I asked his opinion on it. Mr. Milton looked it over and he said, well he said 'I do not think that is going to work.' I said, 'Why not?' 'Why,' he said, 'you have got the igniter finger pointing upward on a direct push of the magneto rod and,' he says, 'that is going to place it out of time so that it won't trip at the right time.'

The Court: The witness is referring to Plaintiff's Exhibit 18.

Mr. Bulkley: I should have said that.

Q. That is what you talked with Mr. Milton about when you showed him that drawing?

A. Yes, sir.

Q. Is that all you talked with him about?

A. As near as I can recollect, that is about all that was said, except I said that I was sure it would work.

Q. Now, that related, did it not, to the means by which the spark was determined in connection with the hit or miss type of engine? What you have described, doesn't it relate to that solely?

359 A. It relates to the time of spark solely.

Q. With reference to what?

A. The position of the crank shaft or the piston.

Q. Isn't it true, Mr. Kane, that what you were talking with Mr. Milton with reference to at that time related to the actuating mechanism between the engine and the magneto?

A. If you call the—yes, sir, that related to the time of the actuating mechanism.

Q. The time with reference to what?

A. With reference to your crank shaft.

Q. Well, what does that mean?

A. It means that Mr. Milton said that this rod, instead of going forward at the right time to get the spark when your piston, was up in the compression stroke. Instead of going forward at that time he thought it should be coming back. That was his opinion on this device.

Q. And that is what you talked about on that occasion, was it, in connection with that drawing?

A. Yes, sir.

Q. And that is all that was said?

A. Yes, sir.

Q. You just simply showed him that drawing?

A. Yes, sir.

Q. And told him that there was something you had?

A. Yes, sir.

Q. And then he made that answer.

A. Well, he, of course, looked it over a little bit; studied it.

Q. Yes; but that is all he said, was it?

A. Yes, sir.

360 Q. And you didn't talk anything about this plug and magneto arrangement, did you?

A. No, sir.

Q. Well, what difference, Mr. Kane, with reference to this trip finger which is shown on your drawing, and which you say Mr. Milton said went up too far,—what is the difference in that respect between that which is shown in your drawing, Exhibit 18, and that which is embodied in the old Milton machine, Exhibit No. 11, which I show you? What is the difference between the two?

A. There is no difference between these two, but there was a difference in the time that the push rods operated. In this mechanism here the push rod comes direct from the eccentric. In this mechanism here the push rod did not come direct from the eccentric. It come from the eccentric to the bottom of a lever, and then there was a pivot, and then this rod come over the top, so that the time of motion was just reversed.

Q. Where is anything of that kind which you have just described shown in this drawing, Exhibit 18,—your eccentric connection that you refer to?

A. Here is the broken magneto push rod that goes to the eccentric (indicating).

Q. It isn't shown there, is it?

A. There is no eccentric shown here, no, sir.

Q. How did Mr. Milton know that it was going to act any differently from that which he had embodied in the old mechanism?

A. I do not know how he knew.

Q. He couldn't know from this drawing, could he?

(No answer.)

Q. You can answer the question or not. If it is embarrassing to you, I will withdraw it.

A. I do not know whether he did or not.

Q. Now, Mr. Kane, what is there on this drawing, Exhibit 18, which could lead Mr. Milton to think, or express
361 himself to the effect, that this was going to operate, as

shown in here, any different from what it operated in the old mechanism? Tell me what there is that would give rise to any such suggestion as that on the part of Mr. Milton?

A. There is this much: One of the troubles that we had and one of the objections—

Q. If you will permit me to interrupt you for the sake of time,—I am asking you what is shown on this drawing that would lead Mr. Milton to suppose that there was any difference in the operation of that device, or the manner of operating that device, then in the old one, the old magneto.

A. In this magneto here, in order to make that operative, one of the great objections to that thing was that in the field in order to put this magneto on we had to take the exhaust cam and the magneto, or the igniter eccentric strap, off the engine and put a new one on, and that was quite a job. Now, one of our objects and one of the things desirable in the new magneto attachment was a means to put the magneto on the engine without taking that exhaust cam and eccentric strap off of the engine, and the models that I had taken up to Milwaukee, the two models Mr. Milton had made, embodied that feature, and it was kind of—it was my understanding that a new attachment ought to be a good field attachment.

Q. Oh, Mr. Kane, if you will just permit me a minute; I didn't ask you anything about that. I ask you now, if you will remember, to look at this drawing.

A. Yes, sir.

Q. And to tell me what there is shown on that drawing which would lead Mr. Milton or anybody else to suppose for a minute that it would operate any differently, in respect 362 to the thrust rod actuating mechanism, than it did in the old magneto arrangement of Mr. Milton. Now, tell us what there is on that drawing.

A. On this drawing there isn't anything.

Q. Yes. You say, Mr. Kane, that you keenly appreciated the situation in which the Webster Company found itself with respect to the old Milton magneto.

A. Yes, sir.

Q. And you had a talk with your father about the situation, didn't you?

A. Yes, sir.

Q. And he told you that you ought to put your mind to work to try to get up something which would relieve that difficulty, didn't he?

A. He told me that if somebody didn't do it the Webster Company would not have any more of the Harvester Company's business.

Q. Didn't he tell you you ought to do it,—that you ought to try to get up something to do it, yourself? Didn't he tell you that?

A. No, sir, I do not think so.

Q. You do not think so. Now, how long before Mr. Webster enlisted your services in getting this up did you have that talk with your father?

A. It was not before this time.

Q. It was after that, was it?

A. Yes, sir.

Q. And it was after you had got it up, was it, or before?

A. Before I got this up.

Q. Yes. Was it between the time when Mr. Webster asked you to help him out and the time that you got it up that your father talked with you—was it?

A. Yes, sir.

Q. Did you tell him what Mr. Webster had told you
363 to do or asked you to do for him?

A. I think I mentioned the fact.

Q. Then you went home and in the afternoon of the next day at your house—am I right about that?

A. Yes, sir.

Q. —you got up this drawing—Exhibit No. 17, is it? Is it 17?

A. Exhibit No. 7, I think.

Mr. Bulkley: It should be 17, shouldn't it?

Mr. Williams: Let us not get that confused. You see this drawing was involved as an exhibit in the interference, and it has the exhibit marking which was there used. In this case it is Plaintiff's Exhibit 17.

Mr. Bulkley: All right. Exhibit No. 17. Now, read the question to the witness.

(Question read as follows: 'Q You got up this drawing, Exhibit No. 17'—)

Q. —did you not, in the afternoon of the next day after you had this talk with your father and after Mr. Webster had asked you to help him out, is that right?

A. No, sir, I do not think you are right.

Q. Well, then, what is the fact?

A. Mr. Webster asked me. That, if I can recollect rightly,

was a Saturday. And on Sunday, the next day, my father asked me, and that afternoon I sat down and did this piece of work.

Q. Yes. That is Sunday afternoon. Now, you said on your direct examination, I think, that your father told you to put your name on it, together with the date, didn't he?

A. Yes, sir.

Q. Did you say anything to him about his putting his name on there?

A. No, sir.

364 Q. Did he say anything to you about his putting his name on there?

A. No, sir.

Q. Did you describe this thing to him at that time when you made it that Sunday afternoon at your house?

A. Yes, sir.

Q. What was your father's position in the International Harvester Company at that time?

A. He was the general manager of the experimental department.

Q. You were living there at home with your father, were you?

A. Yes, sir.

Q. At that time?

A. Yes.

Q. Now, what was it that you explained to your father in connection with this? You needn't describe the whole thing, but just tell me what features of the thing you explained to him, generally? What did you tell him?

A. I just generally told him that I mounted the magneto directly upon the igniter plug of the engine.

Q. Is that all you told him?

A. Why, I probably told him it was a big improvement over what they were doing, or something like that.

Q. Is that the only feature that you described to him?

A. Yes, sir.

Q. Now, Mr. Kane, when was it you got up this device for controlling the initiation of the spark in respect to the speed of the engine so as to cut off the spark when there was no charge in the engine?

A. That was got up shortly after I made the other drawing.

365 Q. Shortly after you got up the drawing, Exhibit 17?

A. No, sir, the one you have in your hand.

Q. Shortly after the one, Exhibit 18?

A. Yes, sir.

Q. How long after?

A. Well, it was within a week or two.

Q. And did you make a drawing of that?

A. Yes, sir.

Q. And did you show that drawing to your father?

A. No, sir, my father never saw that drawing.

Q. You never described to him that invention at all, is that right?

A. No, sir. I probably described that to him.

Q. Do you have any idea when it was that you did, or are you merely conjecturing with regard to that, as to whether you ever described it to him or not?

A. Well, I can't recollect any definite conversation in which I described that to him.

Q. Nor any definite time when you might have had such a conversation with him?

A. Well, he was very much interested in it, and we talked about these matters as the design of the machine went along.

Q. But you haven't got any definite notion now—

A. No, sir.

Q. —as to whether you ever explained this other feature of invention to him or not, is that right—your father, is that right? You didn't have any definite recollection in your mind when it was, if ever, you did explain this invention, this feature of the invention to him, am I right about that?

A. I know I did some time.

Q. But you do not know when it was?

366 A. I couldn't place that time exactly.

Q. Now, coming down to the conversation which you had with your father about getting a patent, when did you have that conversation?

A. Well, it was probably three months after the time I first made the invention.

Q. Was it after you had talked with Mr. Webster,—

A. Yes, sir.

Q. —about patenting it?

A. It was after that talk.

Q. Did you tell your father what Mr. Webster had said to you about it?

A. Yes, sir, I did.

Q. What did he say.

A. He said, 'Well, you take it down to Brown, Nissen & Hopkins, and have Mr. Sprinkle file an application on it.'

Q. Had you known Mr. Sprinkle before you took it down there?

A. Yes, sir, I was acquainted with Mr. Sprinkle.

Q. How long had you been acquainted with him?

A. Well, it was some years anyway.

Q. And did you tell Mr. Sprinkle what your invention was,—describe it to him?

A. Yes, sir, I described it to him.

Q. In his office, in Mr. Sprinkle's office?

A. Yes, sir.

Q. What did you tell him the invention was that you made?

A. Well, I told him I had done some work on magnetos. 'I do not know whether there was very much in it.' My father said we had better file an application on it, so we went ahead and did it.

367 Q. I understood you to say that your father told you in connection with what Mr. Webster had said that, whether it was patentable or not, it would be a good thing to get some patent experience, and to go down to Mr. Sprinkle and get out a patent, is that right?

A. Yes, sir, that is right.

Q. Now, you haven't yet told me what it was that you described to Mr. Sprinkle as your invention when you went there to take this patent out?

A. If I remember right, we took one of these old pamphlets illustrating the old way of fastening it onto the engine, and I also took an illustration, a blue-print, I think, showing the new attachment, and I said, 'Here is the way we used to do it, and here is the way I have done it. You get a patent on it.'

Q. And he said he would, is that right, or he would try to?

A. He said he would try to.

Q. Did he tell you how much he would charge you, or did you have any talk about charges at that time?

A. We had no talk about the charges.

Q. Did you tell him anything about an improvement in the means whereby there should be no initiation of the spark when there was no charge in the engine? Did you tell him anything about that?

A. Yes, sir, I did.

Q. Oh, you did? What did you say to him about that?

A. Well, I explained that to him as one of the differences between the old operation of the magneto and the new.

Q. Now, what did you tell him at that time was the principal and most important thing which you wanted patented, Mr. Kane? I am talking about your conversation with Mr. Sprinkle, now. What did you tell him was the most important feature you wanted covered by the patent?

368 A. I told him I thought the big thing about the whole apparatus was how nicely that spark would cut-out.

Q. 'Cut-out,' what do you mean by that?

A. The magneto become inoperative.

Q. You told him that was the nicest thing, did you?

A. Yes, sir. I also expressed my opinion I thought that was a big invention.

Q. You did?

A. Yes, sir.

Q. And that is what you didn't show to your father, or don't remember when you ever showed that feature of invention to your father,—is that the one?

A. Yes, sir.

Q. That isn't the one you talked to your father about, is it?

A. When do you mean?

Q. The one for regulating the cut-out of the spark.

A. No, sir.

Q. What was the most important thing that you and your father discussed, and Mr. Webster discussed, Mr. Kane?

A. I and my father discussed largely the means of fastening the magneto onto the engine.

Q. Yes. And that was the thing in connection with which Mr. Webster had asked you to help him out, wasn't it?

A. No, sir.

Q. What? Didn't Mr. Webster ask you to help him out in connection with the means of fastening the magneto and the plug to the engine?

A. No, sir, he did not.

Q. He didn't discuss that at all with you prior to the time that you filed your application?

A. He did prior to the time we filed the application.

369 Q. Well, when was it he discussed that with you?

A. Discussed that with me when I showed him the drawing.

Q. Mr. Kane, is there anything on that drawing,—the

first one that you had,—showing any means of regulating or determining what you call the cut-out of the spark?

A. No, sir, there is not.

Q. No. And did you show that to Mr. Webster?

A. Yes, sir, I did.

Q. The next day after you had made it?

A. Yes, sir.

Q. And in response and in compliance with his request to help him out in connection with this, which you showed him as being the thing to help him out, isn't that true?

A. Yes, sir, we discussed that.

Q. And you didn't discuss anything else before you made this drawing, did you—when you made the drawing, with Mr. Webster?

A. Not before I—

Q. Now, to go back, you say Mr. Webster had a talk with you about the difficulties arising in connection with the old Milton magneto, is that right? We will go slow, now, Mr. Kane, so as to have ample time to answer and not to confuse.

A. All right. I thank you. As I stated before, Mr. Webster come up to me and said the situation was serious; that they had to have some better means of attaching the magneto, or something had to be done, and wanted to know if I could offer any suggestions or help him.

Q. In reference to what did he want you to do something?

370 A. In reference to any new attachment.

Q. Well what new attachment?

A. Any new attachment that I could make to help him, or anything.

Q. Well, what did he tell you was the trouble he wanted you to remedy, if it was possible for you so to do?

A. As near as I can recollect, he didn't make any attempt to specify what the troubles were.

Q. Did he tell you anything about any particular part of the apparatus—

A. No, sir.

Q. —that he wanted you to direct your attention to in order to cure the evil?

A. No, sir, he did not.

Q. Didn't you know what he was talking about when he

spoke of the troubles and difficulties that had arisen in connection with the apparatus of the old Milton type sold to the International Harvester Company?

A. Yes, sir, I had a good idea.

Q. You had a good idea. And what was that idea?

A. Well, the magneto was insecurely mounted on the engine.

Q. Exactly. Did it have anything to do with this cut-out, spark cut-out? Did you have any idea that that was what he was talking about in connection with which he wanted you to remedy difficulties?

A. That was one of the difficulties we were having.

Q. Did you have any idea that that was what he was referring to when he enlisted your help and asked you to help him out?

A. I had an idea any suggestions we could give to Mr. Webster to help out the situation at that time he would be very glad to get.

371 Mr. Bulkley: Q. Now, I understand you to have said, Mr. Kane, that the report which was made by Mr. Waterman under date of March 15, 1909, which is marked in evidence Exhibit 1, was what led Mr. Webster to come to you for your assistance; didn't you say that, Mr. Kane, on your direct examination? And I show you the letter. (Handing letter to the witness.)

A. I have no doubt this had something to do with Mr. Webster's coming to me.

Q. Do you find anything in this or any allusion to this feature of what you call the automatic spark cut-out?

A. No, sir.

Q. Now, as I understand it, Mr. Kane you told Mr. Sprinkle that the most important feature of your invention, and that which you wanted him by all means to patent, was the means for automatically cutting out the spark,—that feature; is that right?

A. That was one of the things, yes sir.

Q. Well, now did you tell him that that was the most important thing?

A. I do not know whether I told him, or whether he seized upon that himself. I could not answer that.

Q. I thought that a moment ago you told me that that is just what you told him. Didn't you?

A. I told him I thought that that was the nicest and most ingenious thing in it.

Q. Now, what did you tell him about the means by which the magneto and plug were to be attached to the cylinder?

A. Well, outside of telling him that by doing that we had a means of securely fastening the magneto to the cylinder, and also a means of cutting out a lot of intermediate and useless mechanism, I do not know as I told him very much.

372 Q. You did not consider it of very much importance; is that right?

A. It seemed to me a matter more of design than importance—invention.

Q. Is that what you told him?

A. Yes, sir.

Q. And you told him that you thought that it was not an invention, and was a mere matter of design? You told that to Mr. Sprinkle, did you, when you went to him to get a patent?

A. I told him it was a good means and preferred means of fastening the magneto on the engine.

Q. Well, I asked you if you told him that you thought it was a mere matter of design, and not an invention.

A. I possibly did, yes.

Q. You possibly did? Don't you know whether you did or not?

A. No, sir, I could not say for sure.

Q. Did you read over the specifications?

A. Yes, sir.

Q. And claims, which he prepared, and look carefully at the drawings?

A. Yes, sir, I did.

Q. Did you understand what he was talking about in the specifications, and did you understand the drawings which he made for you?

A. I understood the drawings, and I understood the specifications fairly well. The claims were a little bit hazy in my mind.

* * * * *

Q. Was there anything hazy about the description of the invention that he made, and which you read over, that you did not understand?

373 A. No, sir, I do not think there was anything in the description or the specifications I did not understand.

Q. Did you try to see whether he had said anything about this idea of the combined magneto and plug in the specifications?

A. Yes, sir.

Q. Before you signed it?

A. Yes, sir, I did.

Q. And you found, did you, that it was there described?

A. Yes, sir. It is there described.

Q. Was there anything in that specification, before you signed it, and after you had looked it over carefully, which pointed out any of the features of advantage or improvement in connection with that design?

Mr. Williams: I would like to object to that question, because it is not competent. The specification itself shows what it contains, or whether anything was said. I make that objection now simply because I think this cross-examination tends decidedly to become incompetent absolutely, in so far as this witness can testify. I do not think that question is competent, and I do not want to let counsel get the idea that we will not object if he goes farther and farther afield, as he seems to be doing.

The Court: I think it is all right. You may proceed along that line.

Mr. Bulkley: Now, read the question, please.

(Pending question read.)

The Court: Is that question complete? Read that again.

(Question again read.)

Mr. Bulkley: Q. (Continuing) With the design of the combined magneto and plug?

A. Well, the only thing I can recollect at this time it says about the combined plug and magneto bracket is that it states in there that that is the best and preferred way 374 of mounting the magneto on the engine. I think there is something like that in the specifications. There are eight or ten sheets there, if I remember rightly, and there is a lot of stuff in there, and I cannot tell you what all there is in it.

Q. You knew that you had to swear to it, didn't you, Mr. Kane?

A. Yes, sir.

Q. And you tried to get a reasonable knowledge as to what you were going to swear to, didn't you, at that time?

A. Yes, sir.

Q. You did not propose to swear to something that was so hazy that you did not know anything about it, did you?

A. Nor sir.

Q. And you do not believe that you did, do you?

A. No, sir.

Q. Now, you say the claims were hazy and you could not know what they meant exactly, and we are all to some extent in the same boat; but didn't you know what they were claiming at, what feature of invention they were claiming at?

A. In general, yes, sir.

Q. Yes, and what feature of invention were they claiming at when you inspected that document, and signed, executed and swore to it?

Mr. Williams: I object to that question as incompetent. The claims show for themselves. This is not an expert. He is not qualified. I do not know why he should say what they were claiming at.

Mr. Bulkley: He says he knows what they were claiming at or he would not have sworn to it.

The Court: Read it.

(Pending question read.)

The Court: Sustained.

375 Mr. Bulkley: Q. What conversation did you have with Mr. Sprinkle about four years later, in connection with the Milton patent?

A. I told Mr. Sprinkle that Mr. Milton had got a patent on the thing that I tried to have him get me a patent on.

Q. Was that the means for automatically cutting out the spark, that Milton was trying to get a patent on?

A. No, sir, it was not.

.

Q. What conversation did you have with Mr. Sprinkle at that time with reference to the Milton patent and your own application? Now state all of the conversation that you had with him some four years after you made your application through Mr. Sprinkle. State all of that conversation.

A. Why, I called Mr. Sprinkle's attention to the fact that Mr. Milton had had a patent issued, and I told him I thought that the subject-matter was the same as was in our patent; and he said, 'Well, we will have to get that patent, and investigate and see.' So in the due course of time we got a copy of the Milton patent, and Mr. Sprinkle went through

our application and went through the Milton application, and he says, 'Yes, you ought to have those claims in your patent'; he says, 'Your drawings and specification disclose the same idea as Milton has there.'

Q. When did you discover that Mr. Milton had gotten a patent?

A. I was looking through a copy of the Patent Gazette, and as I went through it I happened to come across Mr. Milton's patent.

Q. And how long was that after the Milton patent had issued, that you saw it in the Gazette?

A. That was a month or six weeks, I believe.

Q. Was it as long as that, Mr. Kane?

A. Yes, sir.

356 The Court: What was the date of the Milton patent?
Mr. See: May, 1914.

Mr. Williams: May, 1914, Mr. See says.

Mr. Bulkley: Q. Now, when you had this talk with Mr. Sprinkle some months after the Milton patent had issued, as I understand it,—Was that right?

A. Yes, sir.

Q. You were talking to him, and he was talking to you about that which originally, when the specification was drafted, was what you told him was a mere matter of design, and not invention, was it not?

Mr. Williams: Pardon me. Will you read the question, please?

A. No, sir.

(Pending question read)

Mr. Williams: Just a moment. What was the question?

A. No, sir.

Mr. Bulkley: Q. The same thing, was it not, that you had previously been talking with him about, when the specification was prepared, as not constituting any invention?

A. Nor, sir.

Q. Not the same thing?

A. No, sir. It was the same thing.

Q. What was it about?

A. I told Mr. Sprinkle that combining this plug and the casting on it I did not think there was any invention in that. In Mr. Milton's patent, if I remember rightly, it deals with a trip finger in there, and a cam surface, and that sort of stuff.

Q. Did you carefully consider this Milton patent, after you had seen it in the Gazette?

A. Yes, sir.

Q. And did you discuss it with Mr. Sprinkle?

377 A. Yes, sir.

Q. When were the claims made which were directed to take over into your application that which was claimed in the Milton patent, if you know?

A. Why, I cannot place that date definitely. I know that it was,—it must have been, four or five months after I saw the patent in the Gazette.

Q. Now, Mr. Kane, going back to the earlier period of this so-called development by you, was Mr. Milton in and about the factory premises of the Webster Company on or about the time that you say this thing was developed by you at the instance and request of Mr. Webster?

(No answer.)

Q. Do you understand that question?

A. I do not.

Q. Was Mr. Milton in and about the factory premises when you were getting this thing up for Mr. Webster?

A. Yes, sir, he was.

Q. All the time there, was he not?

A. No, I would not say he was there all the time.

Q. Oh, not every minute, but you saw him each day in and about there, didn't you?

A. No, sir, not each day.

Q. Had he been away for any protracted period, or was he frequently absent from the factory of the Webster Company in and about that time?

A. Yes, sir, sometimes he was away.

Q. Well, was it very frequent that he was away, and was he away for long periods of time?

A. He was not, as a rule, for long periods of time.

Q. No?

378 A. No, sir.

Q. And not very frequently, was he?

A. Well, it depends on what you mean by 'frequently.' Once in a while,—

Q. Well, what do you mean? What do you think? What do you understand by the word 'frequently,' yourself?

A. A couple of times a month.

Q. All right. He might have been away a couple times a month?

A. Yes, sir.

Q. Is that right?

A. Something like that.

Q. Now, during the period when, as you say, this thing was given over to development, when you had gotten it up, and while it was progressing along, he was in and about there, the premises and factory of the Webster Company, was he not, with the exception of infrequent absences, and not absences for any long period?

A. Yes, sir, he was—

Q. Is that about right?

A. He was about the premises.

Q. Yes. Now, who sent you to Milwaukee to see,—to submit this magneto to Mr. Waterman? Did you go on your own initiative, or did Mr. Webster tell you to go?

A. I think it was Mr. Webster told me to go.

Q. Do you know anything about a design which was made by Chiville in an effort to improve the troubles that existed in the old Milton arrangement, at or about that time?

A. No, sir, I do not.

Q. You never heard anything about his having made an effort along that line, as well as yourself?

379 A. Well, I think Mr. Chiville did some work for Mr. Milton. On those two previous attachments that were taken to Milwaukee.

Q. But that is all you know about it?

A. Yes, sir.

Q. You do not know anything about Mr. Webster having asked Mr. Chiville as well as yourself to get up something that would relieve these difficulties? You do not know anything about that, do you?

A. No, sir, I do not.

Q. You did not see any design which Mr. Chiville had gotten up in connection with the same subject-matter with which you were working; is that right? You did not see any design which he had gotten up at or about that time?

A. No, sir.

Q. You did not make any comparison with him of a design by him and your own design?

A. No, sir. I made no comparison.

Q. Oh? Mr. Kane,— And then I will get you go,— Do you

know whether Mr. Munn ever talked with Mr. Milton about this so-called improvement of yours?

A. No, sir.

Q. And when I say 'so-called' I do not want to sneer at you.

A. That is all right, sir.

Mr. Williams: Mean what?

(Question read.)

A. No, sir; I do not know whether Mr. Munn talked to Mr. Milton or not.

Mr. Bulkley: Q. You three did not discuss it together at any time?

A. No, sir.

380 Q. And this work of development went on, this device was embodied in this drawing, Exhibit 18— And may I interpolate to ask you if other drawings or working drawings were made of it at any time by the Webster Company?

A. Yes, sir.

Q. They were?

A. Detailed drawings were made.

Q. And those working drawings were made by Mr. Munn, and you and he discussed it together, did you not?

A. The working drawings were not made by Mr. Munn.

Q. Who were they made by?

A. I made the working drawings.

Q. Yes. Did you discuss—

Mr. Williams: Made by whom?

A. I made the working drawings.

Mr. Bulkley: Q. Did you discuss those working drawings with Mr. Munn, and talk with him about it?

(No answer.)

Q. Do you understand my question, or is it vague?

A. Yes, sir, your question is all right.

Q. Yes?

A. I am trying to think—

Q. All right.

A. —if there was any discussions. No, sir, there was very little discussion with Mr. Munn on the working drawings. They were made practically just as the big drawing there shows.

Q. Now, during these months after you had made this first drawing, up to the time when you had finally developed

that which was to be delivered to the Harvester Company, you had no talk with Mr. Milton about it, did you?

381 A. No, sir.

Q. And you do not know whether Mr. Munn had any talk with Mr. Milton or not?

A. No, sir, I do not.

Q. And so you undertook, yourself, to develop, perfect and give to the Webster Company that which was to constitute its product, to be sold to the International Harvester Company, without any consultation with its chief engineer; is that right?

A. Yes, sir.

Mr. Bulkley: That is all.

Mr. Peaks: Mr. Bulkley, just one second.

Mr. Bulkley: Q. Did you ever have any talk with Mr. T. K. Webster after he had turned down this device or this arrangement which you had submitted to him, as not being patentable, in which he showed that he had changed his mind as to whether it was patentable or not?

A. No, sir, I never had any conversation with him.

Q. Did you ever have any talk with Mr. T. K. Webster when you sold him your application, when you sold the Webster Company—Permit me to correct my question.

A. No.

Q. —when you sold the Webster Company your application?

A. No, sir, I did not have a talk with Mr. T. K. Webster.

Q. And you did not see him at all?

A. No, sir.

Q. With whom did you conduct those negotiations?

A. Mr. Brown and Mr. Williams.

Q. What Mr. Brown?

A. Mr. Walter Brown, manager of the Webster Electric Company, of Racine.

Mr. Bulkley: That is all, unless you think of something more, Mr. Peaks.

382 *Redirect Examination by Mr. Williams.*

Q. Mr. Kane, there has been reference made to the so-called chief engineer of the Webster Company, and to the departments, I believe; can you tell us how many people connected with that organization had to do in any way with

the manufacture or design of magneto equipment? Was it a big organization, or a small organization, in so far as the magneto business was concerned?

A. It was a small organization.

Q. How many people, altogether, were devoting themselves to the magneto business there?

A. Do you mean workmen, and everybody?

Q. Everybody.

A. When I first went to the Webster Company there were probably—oh, twelve or fifteen men.

Q. So that among those twelve or fifteen men there were the salesmen and the demonstrators and the mechanics and the draftsmen and the chief engineer,—give them all the titles you please; no matter how you may designate them, there were only twelve or fifteen?

A. Yes, sir.

Q. Now, you speak about the fifth floor of the factory building, I take it; was the Webster Manufacturing Company at that time engaged in lines other than the manufacture and sale of magneto equipment?

A. The Webster Manufacturing Company was largely engaged in making transmission machinery and grain elevator machinery, and that sort of apparatus, and the magneto department was just a small department up on one end, or, rather one corner it was when I first went there, of the fifth floor.

Q. Now, did you allude to the fact that this Webster Manufacturing Company made also some gas engines?

383 A. Yes, sir.

Q. What part of the company's business was that of manufacturing or selling gas or gasolene engines? Was that a large part of the business or a small part?

A. That was another small part of the business, and occupied a part of the floor that the magneto department was on.

Q. You were asked some questions by Mr. Bulkley, as the result of which you undertook to describe the construction and mode of operation of the old Milton form of magneto, which had been sold to the Harvester Company before your invention was supplied in its stead. May I call your attention to this cut in this pamphlet, Plaintiff's Exhibit No. 13, and ask you if you will on that cut point out very particularly how the motion was transmitted, from what you re-

ferred to as a cam shaft, or eccentric of the engine, to the ignition equipment?

A. Do you want me to put a mark or letters on here?

Q. If you find it convenient. Perhaps I will ask you afterward; after you have explained, without putting any letters on, then I may ask you later to apply letters to some of the parts that you refer to.

A. The cam shaft was located down just forward of the crank shaft of the engine, and the eccentric was located on the end of the cam shaft; and then from the eccentric a connection or rod ran across to the bottom of this lever here which was pivoted on a little casting (indicating), bolted on to the back of the cylinder of the engine, and then from the top of this lever the magneto push rod went over that and tripped the finger.

Q. That is, a push rod went over to engage the push finger of the rotor of the magneto?

A. The push finger or trip finger, as we called it.

Q. Now, as I understood you, there was some difficulty about attaching these devices, such as shown in the 384 pamphlet, to engines in the field? As distinguished from what?

A. As distinguished from engines in the factory.

Q. Let me ask you, before we go to that matter further, if you will draw a lead line and apply the letter 'R,' say, to the pivoted lever intervening between the rod from the eccentric of the engine and the rod running to the push finger of the magneto.

(Witness marks pamphlet as requested)

Q. What was the occasion for installing one of these magnetos in the field? How did that come about?

A. A man would buy an engine from the Harvester Company and he would have the battery equipment on it, and he would have trouble with it and would want to put the magneto equipment on it. If he wanted to put the magneto equipment on it he had to buy the magneto, and the appliances that go with it, attaching it to the engine, from the Harvester Company, and they would have to take that out into the field, or wherever the engine was located, and put this attachment on.

Q. Did you ever have occasion yourself to do that, or to see that done?

A. Yes, sir.

Q What was the difficulty in applying this attachment on this Milting form of mechanism which was overcome by the invention which you submitted, and which was later adopted?

A The difficulty of attaching the old style of Milton magneto was that in order to make the magneto trip in proper relation to the crank shaft, it was necessary to take the exhaust cam and magneto eccentric off the engine and put the new exhaust cam and magneto eccentric back on, which had the keyway in a different place, and that was rather a difficult job for a man to do in the field. Likewise the boss that this magneto was bolted on was not finished on most 385 of the engines in the field. In order to get the magneto to slide over that boss, the man had to take a cold chisel and file, and file it until it was somewhere near round, and that was a big job.

Q. Now, this letter of March 15, 1909, from Mr. Waterman, contains this sentence: 'After careful consideration of the principal features of the Milton magneto existing today, both as erected by us here at Milwaukee and as now suggested by the Webster people for erection, to permit direct operation without altering the present design of the engine, we have reached the following conclusions,' etc. Now, can you explain what you understood when this letter first came to your attention, was referred to by this phrase relating to a suggested construction adapted to permit direct operation and so on; what did you understand that language in that letter to refer to?

A. Well, in the several models that I had previously taken up to Milwaukee at the direction of Mr. Milton, the magneto was attached to the boss, but it did not require shifting the exhaust cam and eccentric, in order to put it on.

Q. Now, did those modifications, as proposed and made by Milton and which you had taken up to Milwaukee on these two trips, did they include this lever or rocker?

Mr. Bulkley: Can't you ask what they included?

Mr. Williams: I am asking whether they did include that. He explained fully to you just what the construction was, as nearly as he could make it clear in words. I am trying to show, if possible, a picture here and showing just what he is talking about.

Mr. Bulkley: It seems to me he ought to ask what was

included and not point out something to him and tell him what it included.

The Court: Go on, Mr. Williams.

Mr. Williams: Will you read the question as far as I have it.

(Question read as follows: 'Now, did those modifications, as proposed and made by Milton and which you had taken up to Milwaukee on those two trips, did they include this lever or rocker?—')

Mr. Williams: Q. (continuing.)—which you have marked with a capital 'R' on the cut on Plaintiff's Exhibit 13?

A. No, sir, those two models did not include that lever.

Q. Was the effect of that lever arm, as marked on Exhibit 13, to reverse the direction of the reciprocations of the motion transmitted from the cam shaft to the magneto?

Mr. Bulkley: I object to the leading question. Why doesn't he ask him what he did?

The Court: He may answer.

A. Yes, it reverses the motion.

Mr. Williams: Q. Now, when it came to the matter of applying the equipment invented by you to the Harvester Company engine, will you explain by reference to this pamphlet, Plaintiff's Exhibit 16, how the motion was transmitted for engaging and tripping the push finger on the magneto, and particularly in so far as the reversal of motion by the introduction or the omission of the rocker lever 'R' is concerned?

A. On the old type of attachment the magneto trip finger projected upwards, practically vertically, and the magneto trip rod worked over the top of the roller to engage this finger. A lever being put in there it was necessary in order to make it function properly to take the exhaust cam and the magneto eccentric off the engine and put on a new one, that had a keyway at a different point. On the improved type which I took up to Milwaukee—

Q. Now, are you talking about your improvement, or the suggestion that was made by Milton?

A. I am talking about my improvement. In My improvement to the lever 'R,' referred to in the other exhibit 387 here—I think you call it No. 13—that was eliminated, and we pushed direct and that made my magneto operate at the proper time.

Q. Now, do I understand that the machines which Milton

had suggested, and which you had taken to Milwaukee, that they in a similar manner to that which was followed in the application of your design, eliminated this rocker lever capital 'R'?

A. The magnetos that I took to Milwaukee of the Milton design eliminated the rocker arm 'R' in the Exhibit No. 13.

Q. Now, when in these machines, as suggested by Milton and which you took to Milwaukee, this reversing lever 'R' was eliminated, was there something else substituted for it by Milton, or in accordance with his scheme?

A. Well, on the Milton scheme that I took to Milwaukee, the trip finger was vertical. Instead of pointing up it pointed down, and the rod from the eccentric on the engine came up forward and passed the trip finger and was hung on a link suspended on the frame of the magneto, and there was a small trip on this rod.

Q. Now, when this Waterman letter of March 15, 1909, first came to your attention, did you understand that it referred both to the old Milton form of equipment as embodied in this Plaintiff's Exhibit No. 11, and as had been proposed by Milton, and in conformity with which suggestion you had taken machines on two trips to Milwaukee—the question is whether you understood that this report of Waterman's covered both the machine, as it was being used, and as Milton proposed to change it?

A. My understanding was that it covered everything that we had ever taken up to Milwaukee, both the regular type and the machines that we took up for improvements.

Q. Now, you say you yourself had had some experience in the matter of attaching or attempting to attach these devices in the field. Won't you explain rather fully just how much and what sort of experience you had on this trip to Lincoln, Nebraska, and other trips which you were taking out into the country, in so far as the mechanics of the trip were concerned; what you had to do with the things mechanically; what you did with them.

A. I don't quite understand what you want me to tell you.

Q. Well, Mr. Bulkley asked you a number of questions about your three months' experience in the factory, followed by some months of experience in going to agencies, and one thing and another, and I want you to tell just what sort of an experience you had with the equipment itself that the Webster Company was trying to sell, and keep sold before

April 11, 1909, and during the interval after you got out of the factory under Mr. Munn and up to April 11, 1909.

A. Well, the experience was something like this: I would go into one of the general agencies, and I would tell them that I was a representative of the Webster Manufacturing Company that made the Milton magneto, and they would tell me that I was just the fellow they wanted to see, and then he would proceed to tell me just what he thought of the type of magneto that was being attached to the engines, and some of his opinions in general as to anybody who would make a thing like that and send it out; and it was not a very pleasant experience for me. I used to go to most of the places with rather a wish that I didn't have to face those fellows. It got so up at the Milwaukee Works that it was practically the same way on the several trips I made up there.

Q. That has to do with what they talked about. But did you in connection with those trips or visits ever see any of the equipment on the engines or ever handle or do anything with it or operate it, or repair it at times, or do anything with it, with the equipment itself?

389 A. Well, I used to see quite a few of them lying in the corner of the scrap heap at the various agencies and some times I could persuade them to let me take one of the magnetos and take one of the engines they had there on the demonstrating floor, and put it on, and try to prove to them that it was all right, and I could take one of those old magnetos and put it on and I could make them operate, and I tried to convince them that the fault was theirs and not the fault of the attachment of the magnetos.

Q. Did you have that experience more than once during this interval of time? Did you do that more than once?

A. Yes, I did that several times.

Q. Now, when you speak of agencies, whose agencies are you speaking of?

A. I mean the general agents of the International Harvester Company.

Q. Their general sales agents?

A. Their general sales agents located at various places in the country.

Q. During this interval of time did you ever have occasion to undertake to correct or eliminate troubles that farmers or others were having in attempting to operate engines equipped with these Milton apparatus?

A. Well, I used to have a particularly hard experience try-

ing to attach a magneto, or trying to make an old one work, and when I would get back to the hotel at times, I would try to figure a little bit on how we can eliminate all this trouble and expense.

Q I am not asking you what you thought or tried to do, but whether you ever went out to a farm or place where an engine was, and where the engine should be in operation, and do anything to put it into operation, or correct its operation; did you ever have that kind of experience?

A Yes, I had that kind of experience.

Q Did you try to do that sort of thing more than once?

390 A. Yes, sir.

Q. How often?

A. Oh, I used to run into something of that kind every little while. If I would go to the agent and there happened to be one of those magneto attachments out in the territory that was giving trouble, I was just the man they were looking for and they would shoot me out to it.

Q. They did what?

A. Sent me out to it.

Q. Then what?

A. I would try to fix it and convince the farmer that it was a fine thing.

Q. Did you try to fix it by talking or doing something mechanically?

A. I used to do both. It was just as important to fix it by talking to them as to fix the magneto itself.

Examination of the witness, Kane suspended to permit witness Waterman to be recalled.

H. A. WATERMAN, having resumed the witness stand, further testified as follows:

Recross Examination by Mr. Bulkley.

“Q. I asked you one question as to whether in the Wattles construction the magneto was mounted on the plug, and you said it was not. What did you understand that question to mean?

A. I understood you to mean that it was attached or part of the regular plug of the engine. I was rather hazy just then, I think, and I have not seen the magneto since, but I recollect quite clearly that the plug and magneto were one, and

that the old plug was removed and the plug part of the magneto was inserted in its place.

391 Q. Where were the tests conducted on this Wattles magneto?

A. We had a small building, a sort of laboratory, and at first Mr. Wattles was assigned an out of the way corner of this building in which to perform his own experiments.

Q. Where were the tests made on this Milton improved form of magneto?

A. They were made on the regular testing floor with the regular product.

Q. In the same building?

A. I think not. I think the former was in the laboratory and the other on the testing floor.

Redirect Examination by Mr. Williams.

Q. This work that Wattles was doing, I understand, was of an experimental nature. Was he making changes as he went along trying one thing and another?

A. Mr. Wattles brought the magneto to the factory and requested a test to be made of it as to durability and efficiency.

Q. And that was found to be unsatisfactory in the test?

A. I told him he might have the use of the floor, and any help he needed so long as he paid the expense, and he went along with that work.

Q. Did he do something more than to put it on and run it on the engine; did he make changes?

A. Yes, he made changes and was still working on it when I left the company.

Q. When you left the company?

A. Yes, sir.

Q. That work of his continued there for a considerable period of time, I take it?

A. Several months the first time; and then at intervals for weeks at a time.

Q. So far as you know the experiments never developed to a point where the company was willing to accept and use the apparatus that he was working at?

A. You mean his company or the Harvester Company?

Q. The Harvester Company?

A. The Harvester Company never adopted the apparatus, no, sir.

Mr. Williams: I think that is all.

Recross Examination by Mr. Bulkley.

Q. To what did these changes that you speak of in this Wattles apparatus relate?

A. As I stated to you this morning, the doubtful question seemed to be the operation of the plunger, which was controlled entirely in its action by the compression in the engine cylinder, and I think he later made alterations in the mechanism which controlled the movable electrode, and most of his work was an effort to get proper lubrication and freedom from wear on the part of this small plunger.

Q. Will you tell us a little more in detail what the changes in the electrodes were to which you have just referred, and which were later made, as I understood you to say?

A. When he first brought the magneto to the factory he depended upon the regular tripping mechanism of the engine to release the movable electrode in his magneto, and later, after a long running of the outfit, either he or some one around him discovered that it worked just as well without the tripping mechanism and he made some slight change to cover that action by the impulse of the small piston—accomplish that action by the impulse of the small piston.

Q. At any time was a change made in the means employed for mounting the magneto on the plug?

393 A. So far as I know, no, sir.

Mr. Bulkley: That is all.

Mr. Williams: That is all, I think.

EDMUND J. KANE resumed the stand on behalf of plaintiff and further testified as follows:

Re-Examination by Mr. Bulkley.

Witness testified that when he first went to work for the Webster Company he was paid a salary of \$75 per month and that after three or four months it was raised to \$100 per month.

MAURICE KANE, called as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Resident of Chicago, age 69, connected with the International Harvester Company. Connected with that concern since its establishment, a little over sixteen years. Father of the witness E. J. Kane. Acquainted with Mr. T. K. Webster. Knew that the Webster Manufacturing Company was selling a so-called Milton magneto to the International Harvester Company in 1908. Knew that witness' son Joe went to work for the Webster Manufacturing Company some time in 1908 or 1909. Knew very little about the magneto equipment which the Webster Company was selling to the International Harvester Company at that time. His son talked to him about the troubles that the International Harvester Company was having with the magneto equipment which the Webster Company was supplying to it, and about his going in the country to look after them, but did not explain the troubles particularly—told him that they were having trouble with them and that he fixed them up all right so they worked. Witness had no knowledge or information as to those troubles, aside from what his son told him, except what he heard through
394 the Sales Department of the company, to the effect that they were having trouble but there was no explanation—they did not know what the real trouble was. Witness heard this in his capacity as head of the Experimental Department of the Harvester Company.

Witness further testified:

“Q. Now, did you ever have any talk with your son Joe about doing anything, or anything that he had done to overcome these troubles in the early equipment?

A. I did, sir. The complaints were so many that I called his attention to it, and said that unless something was done, from the reports that we had, we would have to quit—

Q. Have to quit what?

A. Quit putting those out, those magnetos.

Q. Now, what developed as the result of that conversation between you and Joe?

A. I asked Joe why he did not do something at the factory to remedy that, and I remember very well he said, well, that was not his part of the business.

Q. Now, did he talk with you at any time later about any-

thing he had done to overcome the troubles and the difficulties?

A. No, but at that particular time he went to work right away to make drawings.

Q. How did you know that?

A. He showed them to me.

Q. What did he say about them, or what did you say, at the time those drawings were shown to you?

A. Well, I really did not know very much about them, but I asked him to submit those to Mr. Webster, which he did.

Q. I will ask you to look at this paper, marked Plaintiff's Exhibit No. 17, and ask you whether you recognize or can identify it.

(Exhibit 17 shown witness.)

395 A. Yes, sir, that looks like the drawing that he showed me.

Q. Did he afterward show you other drawings relating to the same general subject matter?

A. I do not remember seeing anything else except this original drawing, that he made at home.

Q. Did you see him at work on this drawing?

A. Oh, yes.

Q. Did he talk with you, or explain to you what this drawing showed, or what his idea was in making it?

A. I think he did, in a general way, but I do not think he went into details.

Q. Can you recall and can you state now what he said to you about this drawing, or what it showed, at that time?

A. Yes; I remember the change that he said he made, mounting it on the spark plug, or whatever you call it, instead of on the side of the engine, that that was his plan.

Q. What else did he say about his plan, or about the drawing?

A. I do not think he went into details with me at all, sir.

Q. Were you in the habit of keeping a diary or memorandum book in 1909?

A. Yes. I usually kept a little memorandum book, so as to—

Q. Have you looked recently to see whether you could find some such book covering this period of time?

A. I did, sir.

Q. Did you find it?

A. Yes, I found one.

Q. Have you that here.

A. I have.

Q. Now, by reference to that book, or to any other circumstances, will you state as nearly as you can when it was that your son Joe first showed you and talked with you about this drawing which you have identified, this Plaintiff's Exhibit No. 17?

396 A. I have got the memorandum book of 1909 right here, and the first memorandum here in reference to the magneto is April 14th, 1909, it says, 'Cavanaugh: Joe has worked out a much simpler attachment of magneto to engine.' Cavanaugh, by the way, was my assistant in the Experimental Department, and was looking after that class of work, that is, engines and magnetos and all that stuff.

(The witness produced a memorandum book.)

Q. Who made this entry you have just read from your memorandum book?

A. I made it myself, sir.

Q. When did you make that?

A. April 14th.

Q. What was the purpose of your making that entry?

A. So as to call Mr. Cavanaugh's attention to it.

Q. Did you do that?

A. Yes, sir.

Q. What did you say to Mr. Cavanaugh?

A. Substantially what this memorandum refers to.

Q. Now, following your son's talk with you about the drawings, or drawing, and following your talk with Mr. Cavanaugh, as you have said, when did you next learn of any further development of the plans at which your son had been working?

A. From the statements made by my son I understood that they were to take it up right away, and make one.

Q. What did he say to you, to give you that idea?

A. That when he showed the drawings to Mr. Webster—he was favorably impressed, or words to that effect; and they were also submitted to Mr. Cavanaugh, and he thought well of the plan; and that they were going to start right away to make some.

Q. Did you see presently an equipment made in conformity with Joe Kane's drawing or plans, as he discussed them with you?

397 A. Yes. Sometime later I saw the magneto made in conformity with those drawings in operation at the Webster factory.

Q. What do you mean, when you saw it in operation?

A. According to the memorandum here (indicating book), I saw that on May 13th, 1909.

Q. What memorandum do you refer to? Will you read it?

A. It is headed 'magnetos: The late style put on a six-horse-power worked well. Will not work on a hopper cooled will have to be redesigned to fit hopped cooled.'

Q. Is that the whole of that memorandum?

A. Well, that is the whole of the memorandum so far as it refers to that test.

Q. When was it you made this notation that you have just read in this memorandum book of yours, this one of May 13th?

A. May the 13th.

Q. 1909?

A. Yes, sir.

Q. Will you state in a general way what your purpose was in making these entries in this little book from time to time?

A. Why, I had no special purpose at that time, except that those matters would come up later on with the Harvester Company, and I wanted to be able to tell them just when I saw it, and give them information.

The Court: State whether the entries were correctly made at the time you made them.

A. They were, your Honor. They were my best judgment, at the time they were made.

The Court: That makes the book all right as evidence, if he cannot recollect, if his recollection is not refreshed.

Mr. Williams: Q. Now, do you have an independent recollection of the fact of having seen, at or about the time
398 we have referred to, a magneto equipment in conformity with your son Joe's invention, having been tried upon an engine, and having seen it in operation, as you have stated,—that is, independent of this memorandum book do you remember having seen it in operation?

A. Oh, yes, I remember that, sir.

Q. Now, when was it you saw it? As a matter of independent recollection, how would you fix the date?

A. Well, I could not really give you an exact date, but it was some time after, of course, seeing these original drawings.

Q. Now, was it soon after, or a long time after?

A. Oh, it might have been a month.

Q. That would be your best independent recollection?

A. Yes, sir.

Q. You heard the testimony, did you, about your having been in Milwaukee, and having seen Mr. Waterman, with a magneto equipment of Joe's invention?

A. Yes, sir, I heard that testimony.

Q. Do you recall being in Milwaukee for some such purpose?

A. I do, sir. I remember going there with Joe.

Q. Now, how did you happen to go?

A. I had some other matters to look after at the time, and Joe told me he was going. So I arranged that we would go together.

Q. Did you see Mr. Waterman there with Joe?

A. Yes, sir.

Q. What was said at the time of that meeting?

A. I do not remember, sir, what the conversation was.

Q. What did it relate to?

A. The fact that Joe had a sample magneto with him that he wanted tried out.

Q. Did you see that sample, at the time?

A. Yes, sir.

399 Q. Can you describe it? What was that sample?

A. It was the same as indicated by the drawings that I referred to.

Mr. Bulkley: Q. What drawings, Mr. Kane?

A. These drawings that he made at home, when he said he was going to change.

Mr. Williams: Q. Do you remember anything more of the conversation with Mr. Waterman at the time of that visit?

A. No, I do not, sir.

Q. Have you any way of stating the date of that visit at Milwaukee, or the approximate date?

A. Not unless I had it in this book here, I could not give you the date.

Q. Will you look and see if you find anything there which will enable you to fix it?

A. (Examining book) This is about the closest that I can come to it; this is May the 22nd (reading): 'Waterman here today; says that the magneto as put on the engine is a good job, and says he believes it better than anything that

they had done or could do.' That memorandum was made on the 22nd of May; so it must have been prior to that time.

Q. You mean prior to that time that you were in Milwaukee with Joe?

A. Yes, sir.

Q. Now, what was the occasion of your making that entry on May 22nd, as you have just read it?

A. The only particular object would be to call Joe's attention to it, and tell him about it.

Q. That entry reads in part, as you have stated it, 'Waterman here today'?

A. Yes, sir.

400 Q. What did that mean to you, at the time you made the entry?

A. It did not mean much of anything to me.

Q. Well, who was the Waterman referred to?

A. The gentleman that testified here yesterday.

Q. Now, the entry reads 'here.' Where does 'here' mean?

A. Chicago.

Q. Did you see Mr. Waterman here in Chicago on May 22, 1909?

A. Yes, sir.

Q. Did you talk with him on that date?

A. Yes, sir.

Q. Now, what did he say about this magneto equipment of Jae's?

A. I do not remember just what he said, sir.

Mr. Bulkley: Just a moment.

A. This was the outcome, or the result,—what I noted on the book here.

Mr. Williams: Q. Was it your idea, in making the memorandum which you have read under the date of May 22nd, to put down the substance of Waterman's talk with you on that date?

A. Yes, sir, that was the purpose.

Q. Now, that memorandum reads in part that Waterman says 'He believes it better than anything that they had done.' Whom did you have in mind as 'they' at the time you made that entry?

A. Why, that would be the department in Milwaukee.

Q. The Harvester Company's department there?

A. Yes, sir.

Q. Do you find in this memorandum book of yours any other entry relating to this work of your son's?

A. No, sir, I think that is all.

Q. Will you look under the date of May 17th, 1909, and see if you find anything there that has a bearing upon this matter?

401 Mr. Williams: Q. Now, what about May 17th?

A. May 17th, 1909 (reading): 'Webster called; he is well pleased with the work you have done for him on the magneto.'

The Court: The same construction would apply to that.

Mr. Peaks: What is that?

The Court: It is merely to fix a date, and not to show anything else.

Mr. Williams: Q. Now, what was the occasion of your making that entry,—on that date, as I take it?

A. So as to call Joe's attention to it, sir.

Q. Who is the Webster referred to there?

A. The gentleman right here (indicating).

Q. T. K. Webster?

A. Yes, sir.

The Court: That is the only purpose for which it is in the record,—to show a date.

Mr. Peaks: It is to enable the witness to refresh his recollection, so he can testify to it—

The Court: Yes, I suppose that would be the better way.

Mr. Peaks: The entry itself is not competent.

The Court: Yes.

Mr. Williams: Q. Now, what magneto or what work did you refer to in making that entry on May 17, 1909?

A. The work that Joe had done on this particular type of magneto.

Q. And about which you have been testifying?

A. Yes, sir.

Q. Now, at the time that you saw this new machine of Joe's in operation on an engine at the Webster Company's factory, who were present, in addition to yourself?

A. Mr. Cavanaugh, Mr. Webster, Joe Kane, and there were some other parties, but I do not remember their names.

402 Q. How did the magneto equipment which you saw in operation on this engine at the Webster Company's

plant compare with the magneto equipment which Joe Kane took to Milwaukee with you, at the time of your conversation with Mr. Waterman, as you have described it.

A. I understood that they were the same, sir.

Mr. Bulkley: That is objected to, your Honor, and we move to strike it out. He says he understood they were the same; he does not know anything about it.

The Court: That may be stricken out.

Mr. Williams: Q. Well, let me ask you, as a matter of your own recollection, based upon having seen the equipment on the engine, and the equipment which Joe Kane took to Milwaukee, how they compared with one another?

A. I was not very familiar, thoroughly familiar, with that class of work, and I did not examine closely into those things at all, so that there might be some slight variations, and I would not know anything at all about it, and consequently I cannot testify on that.

Mr. Williams: Q. Well, was there any similarity between the two, as you recall the matter?

A. According to my recollection, sir, they were the same.

Q. You are willing, are you, that counsel should examine this memorandum book from which you have read?

A. Yes, sir.

(Witness hands book to counsel.)

A. Those slips are in there where those memorandums are, but he can see anything that is in the book.

Cross-Examination by Mr. Bulkley.

Q. Mr. Kane, you testified as a witness, in behalf of
403 your son, did you not, in an interference proceeding relative to this invention, between Mr. Milton and your son?

A. Yes, sir, I did.

Q. Do you remember whether you had that memorandum book that you have produced today, at the time that you testified in that interference case?

A. Yes. I must have had that, sir.

Q. Do you remember whether you made any reference to it in your testimony in that case?

A. I do not think I did.

Q. Why not?

A. I never thought about the memorandum book at the time.

Q. You did not know that you had the entries in there?

A. No, sir.

Q. Is that it?

A. I did not.

Q. Now, when was it that you discovered the materiality of these entries in this book? Was it after, as I understand, you had testified in this interference case?

A. It was just a few days ago, that I happened to think that I might have something along that line, and I looked up a lot of old memorandums that I had, and I succeeded in getting this one.

Q. And you did not happen to think that this memorandum book of yours had any pertinency at the time that you testified in the interference case, did you?

A. I do not think I did, sir.

Q. No. How long have you been head of the Experimental Department of the International Harvester Company in Chicago?

A. Since 1905.

Q. In connection with your duties as the head of that Experimental Department, you are brought in touch considerably with patent matters, are you not?

A. Quite a good deal, sir, yes, sir.

Q. Haven't you taken out a number of patents, yourself?

A. I have, sir.

Q. Did you ever get into any interference proceedings in connection with any of the applications for patents which you have made?

A. I do not remember, sir.

Q. Haven't you had considerable to do in connection with interference cases relative to matters of the International Harvester Company?

A. No, sir.

Q. Well, what has been the nature of your duty which has brought you in touch with patents in connection with the International Harvester Company? What are your duties that would bring you into touch with patent matters, as head of the Experimental Department?

A. Very little, sir, that would bring me in touch with the patents, because those matters were all referred to the Patent Department.

Q. Weren't you called in by the Patent Department to consult with them about matters relating to inventions, at all?

A. Yes, to inventions, yes, sir.

Q. Yes.

A. Yes.

Q. Which inventions were to be patented, were they not, by and through the Patent Department?

A. Yes, sir.

Q. Now, before you went into the employ of the International Harvester Company, what were you doing?

A. I was connected with one of the Harvester Companies that were taken into the International Harvester Company.

405 Q. What company was that?

A. The Champion.

Q. And what were your duties there?

A. I had charge of the experimental work for several years.

Q. Did you have anything to do with the getting out of patents?

A. Yes, sir.

Q. For that company?

A. I did, sir, in those days.

Q. Now, what was it that you had to do with the getting out of patents for that constituent company?

A. Well, I referred them to the patent attorneys, and they looked after the work, of course.

Q. Well, what did you do with the patent attorneys?

A. Just had the drawings made, and put them right to them, and explained them to them.

Q. You told them, did you not, what you thought the features of the invention were of the most importance, and discussed the matters generally with them?

A. Yes, sir, I did.

Q. Didn't you do that, and haven't you done that for some time, with the Patent Department of the International Harvester Company?

A. No, sir.

Q. Who does that?

A. Why, the party that done the inventing.

Q. And you have nothing to do with that at all?

A. No, sir.

Q. I understood you to say, Mr. Kane, that when your son produced this drawing,—or you saw him making the drawing?

A. Yes, sir.

406 Q. That Sunday afternoon, in the house. Did you ask him what he was doing, while he was making that drawing?

A. Why, I do not remember, sir, but I presume I did. At least I knew what he was doing.

Q. Did he tell you?

A. Yes, undoubtedly. I saw him at work.

Q. Don't you know whether he did or not? You have no recollection?

A. Oh, no.

Q. You say he did not explain to you that drawing in detail at that time?

A. I am quite sure he did not, sir. I would not understand it very well, if he did, so there would not be any—

Q. Why wouldn't you understand it?

A. Because I did not know much about the engine business, or the magneto.

Q. Didn't you know enough about the engine business and the magneto to be able to read a drawing when it was shown to you, and understand, with the aid of his explanation, what it was all about?

A. Oh, I think I would, sir.

Q. Yes.

A. Yes.

Q. You did not take enough interest in what your son was doing to find out in detail what was shown in that drawing, did you?

A. No, sir, I did not know enough about it to take very much interest in it.

Q. Well, I ask you again, Mr. Kane, if you could not have understood what your son was doing, and what he had illustrated in the drawing, if he had given you an explanation, and you had had the drawing before you.

407 A. I believe I would, sir.

Q. Then again, I ask you why it was that you did not take enough interest in what your son was doing at that time, what he was making a drawing of, to ask him to explain it to you, and look at the drawing, and get an understanding of it? You did not take enough interest in it to do that, did you?

A. No, sir, I did not.

Q. You had suggested to your son, did you not, that he

should proceed to apply his mind to overcome some grievous difficulty, in the Webster Company's manufacture, did you not?

A. Yes, sir.

Q. In connection with the way of attaching or securing the magneto and the plug to the engine?

A. No, I did not. I did not know anything about that.

Q. Hadn't you ever seen a plug and magneto attached to an engine at any time before you saw—before you had that conversation with your son, in which you directed him to apply his mind to it?

A. No, sir, I did not.

Q. You had never seen an engine? Had you ever seen an engine with a magneto and a plug working together, at the International Harvester Company, prior to the time that you had the talk with your son?

A. No, sir.

Q. So you did not know what the structure was that he illustrated in the drawing on that date, on that Sunday afternoon that he made it?

A. Only in a general way, sir.

Q. Well, what way? What did you know about it?

A. That he was trying to remedy the difficulties we were having with the magneto that we were then using.

408 Q. And you did not ask him how he did that, or remedied that difficulty, did you?

A. Oh, I presume I did, but I do not remember just now the—

Q. Now, when did you first learn what you now say your son had done on that Sunday afternoon, in detail, and with regard to what it was that he had done? How soon after that did you learn about it?

A. I really do not know, sir. I could not tell you.

Q. Well, can't you give me some idea about how soon it was? I do not ask you for the precise time.

A. I know they went to work at it right away, I remember that, and produced the magneto, and as I have already stated, I saw it in operation.

Q. Now, Mr. Kane, you just told me a moment ago, and you told the same thing on your direct examination, if I am correct,—and I do not want to hurry you; if I am incorrect in any statement that I make I want you to correct it; you told me a moment ago, and you stated on your direct exam-

ination, that you did not know what your son had illustrated in this drawing, when he made in on that Sunday afternoon; is that right?

A. No, I do not think that is just exactly correct.

Q. Well, now, then state it.

A. I knew in a general way, undoubtedly, when I saw that drawing, and of course, he explained it to me, but as to what the details were, or just how it was accomplished, I am quite sure I did not go into that.

Q. Well, you now say that he explained it to you?

A. Oh, he must have told me something about it, of course.

Q. I am asking you for your present recollection.

A. Well, it is pretty hard—

Q. Not as to what he must have done or doubtless did do.

409 A. It is really pretty difficult to recollect just the conversations that took place ten years ago.

Q. That is very true, Mr. Kane. That is very true.

A. I do not like to testify to that.

Q. That is very true.

A. I could make the statement, of course, and probably it would not be contradicted, but I will not do that.

Q. Do you have now any present recollection as to when it was when you first learned what your son had done on that Sunday afternoon in detail?

A. No, I could not state, sir, exactly when that—

Q. I am not asking you to state it exactly, and I will say again how, can you state it approximately, or as near as you can? And if you have no recollection, you can say so.

A. I know that the thing was adopted, and very soon after this first drawing was made.

Q. That is what you said before. Pardon me.

A. That they started in to make patterns, and the complete magneto was produced very soon after.

Q. Now, I am not asking you as to when they adopted it, or when it was adopted by the International Harvester Company, but when did you first learn, as near as you can now state, what it was that your son had done, on this Sunday afternoon, in detail?

A. I do not think, sir, that I ever went into it in detail at all.

Q. Well, how far did you go into it?

A. Oh, just a general way, looking it over.

Q. What do you mean by a general way? How much did you learn about it, when you looked it over in a general way?

A. Well, I could see that it was attached to the engine.

Q. Is that all?

410 A. —different from the other.

Q. Different than the other?

A. Yes, sir.

Q. Is that all you ever learned about it?

A. Substantially.

Q. At any time,—that is all you knew about it?

(Witness nods.)

The Court: Did you hear that nod over there?

Mr. Bulkley: Q. Mr. Kane, didn't you tell your son something that he ought to do, with reference to getting out the patent on this thing, which you say he had invented?

A. Yes, sir, I did.

Q. What did you say to him? What did you tell him?

A. I told him he had better apply for a patent.

Q. Is that all you told him about it,—to do?

A. And who to submit it to,—file the application.

Q. Who was that? Who was that that you told him to submit it to?

A. It was the firm of Brown, Nissen & Sprinkle.

Q. Had they been taking out patents for you, that firm?

A. Yes, sir, in former years.

Q. Did you go with him to see the patent attorneys?

A. I think I did, sir.

Q. When? How long was it after that Sunday afternoon when he produced this drawing?

A. Oh, it was quite a while after that.

Q. How long after?

A. Probably six months. It might be longer. I am not—

Q. Did he tell you what Mr. Webster had said about the invention not being patentable?

A. He did, sir.

Q. Did you express your opinion to your son upon
411 that phase of the question?

A. I did, sir.

Q. What did you tell him?

A. I told him I thought that he could get some sort of a patent on it.

Q. You said that on general principles?

A. On general—

Q. Or from your knowledge of this device?

A. On general principles, sir; not from my knowledge.

Q. Did you ever have any talk with the patent attorneys about it, the application which he was going to make on this thing?

A. Well, I presume I did; that is—

Q. I am not asking for your presumption, but for your present recollection.

A. I do not recollect, sir, what I said to the attorneys, but I am quite sure that I went with my son, and told them that he had this device.

Q. What device did you tell them that he had?

A. The magneto. And to have him file an application on it. Outside of that I do not think I went into any of the details, or—

Q. Did your son ever tell you that he had made an invention in connection with means whereby to cut out the spark of the magneto, when there was no charge in the engine cylinder?

A. I understood that that was one of the features.

Q. When did he tell you that that was an invention which he had made?

A. I could not tell you, sir. I do not remember.

Q. How long before, about how long before you went to the patent attorneys with him?

A. I do not know whether it was before or after. I could not state positively.

412 Q. Did he tell you anything about that, on the Sunday afternoon that he made this drawing?

A. I do not remember, sir.

Q. Did he tell you about that before the time you went to Milwaukee with him?

A. I could not state just when he told me.

Q. I am not asking you to state just when he told you, but I am asking you to state, if you can, whether he told you just before you went with him on the trip to Milwaukee or not.

A. I don't remember, sir.

Q. Now, when you went with him, as you say, to see the patent attorney, did you have any discussion with him about this invention for cutting out the spark of the magneto when there is no charge in the engine?

A. I think not.

Q. You are sure about that, are you?

A. Quite sure.

Q. You remember that distinctly, do you?

A. No, I don't remember it so distinctly. But I knew so little about it, that I am quite sure that I would not start to discuss it.

Q. Didn't he explain that to you prior to the time you went to the patent attorney?

A. I don't know.

Q. What did he say to the patent attorney was the invention that he wanted them to get a patent on?

A. I don't remember sir.

Q. What did you tell the patent attorney that you wanted your son to get a patent on?

A. On that magneto.

413 Q. Now, when you say a patent on that magneto, what do you mean?

A. I mean on the magneto made from this drawing that we have been referring to.

Q. Did you have any discussion with the patent attorney as to whether that was an invention, or whether you could get a patent on that or not?

A. I did not.

Q. You had previous to that time, had you not, had a conversation or knew of the fact that Mr. Webster had turned down Joe's invention because he said it was not patentable, did you not?

A. Joe told me that, yes, sir.

Q. Yes. You had told Joe to go and see the patent attorneys; that on general principles you thought he could get a patent?

A. Yes, sir.

Q. Then you went with Joe to the patent attorney?

A. Yes, sir.

Q. And you don't remember now whether you said anything to the patent attorney about this question, as to whether it was an invention on which you could get a patent or not, is that right?

A. That is substantially correct, yes, sir.

Q. Didn't you know anything more about this supposed invention of Joe's at the time you went to the patent lawyer, than that it had something to do with the way of fastening the magneto to the plug on the engine?

A. That is the only thing that I remember, sir.

Q. And that is all the knowledge you had of this invention of Joe's, when you went to see the patent attorneys with him?

A. I think that is substantially right.

Q. Did you ever see the specifications and claims that were drawn up by the patent attorney?

414 A. I don't remember seeing them, sir.

Q. You don't remember having looked at them, or having looked them over, to see what sort of a job they had done, in view of the experience which you had had previously in connection with patent matters; you don't remember doing that?

A. I don't think I did so.

Q. You don't think so—pardon me for repeating your answers. Now, when you went down with Joe to the Milwaukee works and saw Waterman, as I understand you did, how much did you know about this invention of Joe's at that time? Anything more than that it was some way for fastening the magneto and plugs on the engine cylinder; did you know anything more than that at that time?

A. I don't think I did, sir.

Q. Now, was it after that that you went to see the patent lawyer with Joe?

A. Oh, yes.

Q. Now, don't let us get confused. Let us see if we get it straight: So that at the time you went to see the patent lawyers with Joe, all you knew about his invention was that it was a means or some way of securing the magneto and plug to the engine; that is right, isn't it?

A. That was the general idea that I had.

Q. And that was all you had?

A. No, I wouldn't be sure of that.

Q. What more did you have?

A. I don't remember anything more than that.

Q. When did you next see this drawing, Exhibit 17—is that it—after you saw it on the Sunday afternoon when your son was making it; when did you next see it?

A. I think it was when they had the interference case
415 up, sir; I have no recollection of seeing it at any other time.

Q. Did you look at this drawing with any degree of care on that Sunday afternoon when he showed it to you?

A. No.

Q. You just looked at it casually, did you?

A. Just in a general way, that is all, sir.

Q. That is what I thought. How do you identify that drawing as being the same one, or like or similar to the one you saw on that Sunday afternoon when your boy made it?

A. About the only thing I would recognize was the way of attaching it to the spark plug; that was the one thing that attracted my attention. The details I paid no attention to, because I didn't understand that particular line of work.

Q. Now, you say you identify it by the way in which the spark plug was attached to the engine. State what that identification is. What is there about the attachment of the spark plug to the engine, by means of which you identify that drawing as being the one that he made on that Sunday afternoon?

A. This magneto was mounted on the spark plug; that is the feature of it.

Q. And that is all you know about this drawing?

A. Practically all, sir.

Q. Do you know who paid the patent lawyers for their services in preparing this application and filing it for your son? Did you?

A. I might have handed him the money, but I think that E. J. Kane was the fellow that produced it.

Q. Out of his \$75 a month?

A. I presume that is where he got it.

Mr. Bulkley: If your Honor please, I hold in my hand a letter from Mr. Waterman to Mr. Maurice Kane, which I believe was identified by Mr. Waterman on the witness stand yesterday, but which I did not mark for identification, when it should be offered in evidence. I will ask that it now be marked for identification as Defendant's Exhibit 2. I will now ask to have this letter marked for identification as Defendant's Exhibit 2, this letter, which purports to have been written and sent to the witness by Mr. Waterman.

(Said letter was then marked for identification Defendant's Exhibit 2.)

Mr. Bulkley: Q. I will ask you to look at this letter marked for identification Defendant's Exhibit 2, which purports to have been written and sent to you by Mr. Waterman (handing Defendant's Exhibit 2 for identification to the witness.)

Mr. Williams: May I get this straight. You have not yet offered this letter?

Mr. Bulkley: No, I have not.

The Witness: I may have seen that, sir, but I don't remember it specially.

Q. You probaly did see it, didn't you, Mr. Kane?

A. Yes, very likely, sir; but my assistant Mr. Cavanaugh was looking after that work, so I didn't pay much attention, but when I received letters on magnetos and engines, and things like that, I usually referred them to him.

Q. This subject matter was within your jurisdiction, within the jurisdiction of your department, was it not?

A. Yes, sir.

Q. But you turned it over, if I understand you, to Mr. Cavanaugh and paid no further attention to it particularly?

A. That was the custom.

Q. Although you were head of that experimental department and that subject matter was under your jurisdiction, you didn't know anything about what they were doing in connection with this subject matter, is that right?

A. I would have a little knowledge, but I would not know exactly—

Q. How much would that knowledge be, how extensive?

A. I would know in a general way what they were doing, but I would not follow the details. The business was too large for any one person to do that.

Q. Did you ever follow it any more than to know that what they were doing was mounting the magneto on the plug; is that as far as you ever went into it?

A. I paid very little attention to it, sir.

Q. Can't you answer the question? If not, say so. Did you go into it any farther than to learn they were mounting the magneto on the plug?

A. That seemed to be the general thing, and that is all I paid any attention to.

Q. That is all you know about it?

A. Yes, sir.

* * * * *

Q. You know Mr. Waterman's signature when you see it?

A. Yes, sir.

Q. Is that his signature?

A. Yes, sir.

Q. Was that letter received by you in the ordinary course of business? Did you answer that question?

The Witness: No, sir.

Mr. Williams: What was that?

Mr. Bulkley: He said he had not as yet answered it.

A. I don't see anything here that would recall my having ever seen this, but I notice Mr. Kimbark—'E.H.K.'; it is marked here—seemed to handle it; but I don't remember it.

418 Q. Would it not have been handed to you for your inspection and knowledge of its contents in the ordinary course of business?

A. No, it might not be.

Q. It would have gone to your department, wouldn't it?

A. Oh, yes.

Q. Now, your son Joe says that when you were there together on that Sunday afternoon, and he was making this drawing, that you told him out of the abundance of your experience in connection with patent matters, I suppose, you told him to put his name on that matter, with the date when he made it. Do you remember having said that to him?

A. No, sir, I don't remember it; but I would be very apt to do that from what I knew of the patent business.

Q. Well, from what you knew of the Patent Office business, wouldn't it be a much better precaution to preserve his rights if you had put your name on it?

Mr. Williams: I object. I do not know why this witness should be called upon to express an opinion as to what would have been better.

The Court: Go on.

Mr. Bulkley: Sir?

A. Well, I believe it would, sir.

Q. Why didn't you put your name on that drawing?

A. I don't know, sir. I don't remember just—

Q. How do you happen to know that it was Sunday afternoon when your son Joe made this drawing, that you have identified?

A. That is the only afternoon that he was home.

Q. And you are sure, are you, that it was Sunday afternoon when he made this drawing?

A. Yes, sir.

Q. Did you ever have any talk yourself with Mr. Webster about this drawing, about this invention of Joe's,—I
419 mean Mr. T. K. Webster?

A. Oh, yes, I am quite sure that I discussed the matter with Mr. Webster; that is, the magneto, not the patent; I didn't talk that with him at all.

Q. What was the nature of that discussion and talk that you had with him about the magneto?

A. I couldn't tell you right now, sir; I don't remember.

Q. Generally do you know anything about it?

A. Practically not, except that Mr. Webster called occasionally at the office there and we would have a little conversation. Just what it was I don't know, I don't remember now.

Q. Of course, I am not asking you to tell me about the general conversations that you had, but put your mind back there now and see if you can remember anything with reference to what you and he talked over concerning Joe's invention at any time?

A. I don't remember, sir, what it was.

Q. But you do remember that you did talk with him about Joe's invention?

A. Why, yes,

Q. Several times, you say?

A. Yes.

Q. Do you remember that you told Mr. Webster that Joe had made an invention?

A. No.

Q. And you have absolutely no recollection at all as to anything concerning these conversations which you had about Joe's invention?

A. No, I couldn't possibly repeat it.

Q. I am not asking you to repeat it, Mr. Kane. That would be impossible after the lapse of ten years. But you don't know and haven't any idea with respect to what conversation you may have had, what it was about, or anything
420 concerning it, except that you talked with him about Joe's invention. Is that so?

A. That is about all, sir, that I could—

Q. It was called to your attention, was it not, frequently along in 1908, when they were selling the old Milton magneto that there was a good deal of trouble in connection with?

A. Yes, I have seen reports on that.

Q. Did you make any investigation to determine what that trouble was?

A. No, I did not personally.

Q. You handed it all over to Mr. Cavanaugh, did you?

A. Yes, sir.

Q. And you did not concern yourself with it at all, is that right?

A. Only in a general way.

Q. What general way?

A. Well, I was responsible for the department, and I had to do something to see that things were righted.

Q. Did you do anything more to see that things were righted except to hand it over to Mr. Cavanaugh?

A. That was practically all, sir.

Q. Now, here is a letter marked for identification Defendant's Exhibit 1. I ask you if that is signed by Mr. Waterman.

Mr. Williams: What is that question?

(Question read.)

A. Yes, sir, I believe that is his signature.

Mr. Bulkley: Q. How, that is directed to the experimental department, Harvester Building, Chicago. That is your department, isn't it?

A. Yes, sir.

Q. And such a letter as that would be sent to your department and considered either by you or your assistant; that's right, isn't it?

421 A. This would be referred to my assistant without—

Q. Did you ever see that letter?

A. I don't know, sir; I couldn't tell you.

Q. Have you looked it over to see?

A. Yes, I have no recollection of seeing it.

Q. Now, when you went to Milwaukee with your son, did you see any test made there of this invention of your son at that time?

A. I don't remember seeing a test.

Q. Did you ever see any test made of that invention at any time?

A. Yes, I saw it at the Webster plant; I remember it there.

Q. Was that before or after you went with your son to Milwaukee?

A. I think that was before going to Milwaukee.

Q. Now, who was present at that test that you saw?

A. Mr. Cavanaugh, Mr. Webster, Joe Kane and myself, and there were some others, I don't know who—

Q. What were you all assembled there for; what was the purpose of getting that assemblage together on that occasion?

A. Just to see the operation of the magneto on the engine.

Q Did you observe that test at that time and carefully consider what was the result of the test?

A Yes, I saw the test.

Q And you discussed it with the others, all who were there at that time, or did you?

A I don't remember any discussion that we had on the subject. But it would be very reasonable that we talked it over.

* * * * *

Redirect Examination by Mr. Williams.

Q Let me ask you, Mr. Kane, what class of machinery you were devoting your attention to when you were with the Champion Company prior to 1905.

422 A Confined entirely to harvesting machinery.

Q After you went to the International Harvester Company, and after the Champion Company was absorbed into the International Harvester Company, what class of machinery did you devote your own time to specially?

A Harvesting machinery, sir.

Q Now, the Harvester Company had how many manufacturing plants; or did it have more than one manufacturing plant?

A Oh, they had about a dozen different plants.

Q And you were located here in Chicago at the Chicago office or plant, were you, from 1905 until the present time?

A Yes, sir.

Q Now, does the Chicago plant, or do the Chicago plants manufacture gas engines, do you know, or are they made elsewhere?

A They were made principally in Milwaukee.

Q What class of machinery was manufactured here in Chicago, to which you devoted your personal attention largely?

A The principal parts of harvesting machines were made in Chicago, at the Deering and McCormick works.

Mr. Williams: That is all.

JAMES A. MUNN, called as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 57, residence Racine, Wisconsin. Employed by Webster Electric Company on experimental work. Connected with that company and its predecessors from a date just prior to their removal to Tiffin, Ohio, in 1909. Acquainted with E. J. Kane, who was brought up to the shop and introduced to the witness by Mr. Milton and turned over to charge of the witness. This was at the plant of the Webster Company at 15th Street and Western Avenue, Chicago.

423 Witness worked for Webster Company for a good many years before the Webster Electric Company was organized. In 1909 had charge of the construction of magnetos and also experimental work. The Milton previously mentioned was John L. Milton. He had charge of the magneto work. Was the immediate superior of witness.

Witness recognized cuts appearing in the pamphlet marked Plaintiff's Exhibit 13 as representing the magneto as located on a Harvester engine with a separate connection with the igniter plug. First became familiar with that apparatus when witness made it about the latter part of 1907 or the early part of 1908. The apparatus was manufactured and sold by the Webster Company following that date.

The witness further testified:

"Q Do you know anything about a form of apparatus which was subsequently manufactured and sold by the Webster Manufacturing Company in lieu of this apparatus disclosed in this pamphlet, Plaintiff's Exhibit 13.

A Yes, sir.

Q Will you state what you know about that apparatus, how it first came to your attention, under what circumstances and what followed.

A Before it was manufactured or afterwards?

Q Before it was manufactured.

A Before it was manufactured—E. J. Kane came to me one day and said that he thought he could get up a magneto and plug in which the magneto was mounted directly on the plug doing away with the trouble we were having with magnetos in the field, with the old construction. I told him that

he would better go ahead and make that up; better make up drawings and I would make up a plug from those drawings; and we would try it out.

424 Q You told him that, did you?

A I told him that, yes, sir.

Q What happened then?

A That was in the early part of 1908, I should say.

Q I say, then what happened?

A Then what happened?

Q Yes, sir.

A One day—he made up the drawings and I got the patterns made from the drawings, and got castings from the foundry, and machined up the castings, and made the plug according to the drawing.

Q After you had made one up what was done with it?

A We placed it on the Harvester engine which had been placed at our disposal and tried it out.

Q Where was that done?

A That was done on what we called the fifth floor of the new building of the old factory out at 15th and Western Avenue.

Q Of the Webster Manufacturing Company?

A Yes, sir.

Q Did you make up more than one of those samples?

A I only remember the one.

Q Did you have anything to do with the subsequent manufacture of an equipment of that general character?

A I think not.

Q Was that within your province?

A Yes, sir, I was employed—I was occupied with other work at that time.

Q You say that Kane made a drawing from which you made this first sample?

A Yes, sir.

Q Did you see that drawing?

A Yes, sir.

425 Q While it was being made?

A While it was being made.

Q Who was making it?

A Mr. E. J. Kane himself.

Q Where did you see him doing that?

A On the fifth floor of the new building in the old plant.

Q I call your attention to the paper which has been of-

ferred in evidence as Plaintiff's Exhibit 17, and ask you whether you recognize that or can identify that?

A I don't think I have ever seen this, but I cannot state positively.

Q I call your attention now to a paper which has been marked Plaintiff's Exhibit 18, and ask you whether you recognize or can identify that?

A To the best of my knowledge it is his drawing, that was made by E. J. Kane at that time.

Q And the one upon which you saw him at work?

A Yes, sir.

Q Did you have any talk with Kane about the machinery disclosed in this drawing at the time you was working on the drawing?

A Why, we was discussing it from time to time as he drew it up.

Q What did you say,—he or you?

A I can't remember any particular conversation. I may have offered some suggestions as to the details of it for manufacturing.

Q Do you understand drawings? Are you capable of reading them?

A Yes, sir.

Q So that you know what that drawing shows?

A Yes, sir.

Q Did you know at that time?

A Yes, sir.

426 Q How did the machine which you say you made, the sample machine, compare with the machine as shown in this drawing Plaintiff's Exhibit 18?

A As I recollect it, when it was finished it was identical with the drawing. I think there were no changes made.

Q Did it contain anything more, that first sample machine, than is contained in this drawing (indicating)?

A I do not see the electrodes shown in this drawing and they were certainly in the machine, or the machine would not have worked; but outside of that, so far as I can see, it is as we made it.

Q Can you indicate where upon this drawing the electrodes appear to be missing?

A In this view here the rotor—this is the rotor here with a shaft going through—wait a minute—no, the electrodes

would be here where this push finger is connected with the plug; they would be shown right in here.

Q Can you describe briefly the construction of the electrodes, or the parts, with which they were immediately associated, whatever may be missing in this drawing in this regard?

A The electrodes went through two holes. There was a stationary electrode and movable electrode. The stationary electrode was insulated electrically from the body of the plug. The movable electrode was moved by the push finger; that was pushed up by the push rod and opened at a given time with reference to the engine revolution, and a wedge on the push rod was engaged by a roller on the plug which raised the push rod and tripped the trip finger, and the springs would pull it back suddenly at the time the current was generated producing the spark.

Q I call your attention to a piece of apparatus marked Plaintiff's Exhibit 11, and ask whether you recognize that and can identify that?

A Yes, I think that is the apparatus that we made just
427 prior to the one that came to us, and we manufactured,
I think, quite a few of them.

Q Is this exhibit, apparatus, here, complete in all its parts just as it now stands?

A No. The connection between the spark plug and the magneto is missing, the connection that came out here to connect with the spark plug.

Q Is the spark plug itself present in this Plaintiff's Exhibit 11?

A No, sir, I don't see it. It is not.

Q There was a spark plug with the equipment, as I understand it?

A I think the Harvester people furnished that. We did not furnish that.

Q Now, I call your attention to a piece of apparatus marked Plaintiff's Exhibit 12, and ask you whether you recognize it, and whether you can identify it?

A I could not tell you just at what time it was made, but it was our apparatus which we manufactured at a certain period.

Q How does this exhibit 12 apparatus compare with the apparatus which you say that you made following Kane's drawing as submitted to you?

A It seems to be a little bit different. But so far as the

general features go, I would say it was practically identical in its workings.

Q When you say it is a little bit different, will you indicate the differences or the sort of differences that you refer to?

A So far as I can see, there is a difference only in the design of the plug itself. This plug, you will notice, has a—the casting goes down there in that shape, which it does not in that one.

428 Q That is—

A That (indicating).

Q That is, the cross section of that is different?

A It is different from what it is in this drawing.

Q Which way was the first sample apparatus as you made it?

A It was made according to the drawing. To the best of my recollection, it was made just exactly according to the drawing.

Q Do you note any differences between that first sample as you made it, and this Plaintiff's Exhibit 12, apparatus?

A There is a cut out on this apparatus that there was not on this (indicating) at that time.

Q Now, when you say that there was not on this, you mean that there was not—

A The manufactured product, as we made it according to Kane's drawing, did not have that cut out at that time.

Q Does this drawing, Exhibit 18, show what you refer to as the cut out?

A Is this drawing Exhibit 18?

Q Yes.

A No, it does not.

Q Now, the first sample apparatus that you made up by hand following this Exhibit No. 18, drawing, did that have the cut out?

A The next one after this, or this one—

Q No.

A I am getting mixed.

Q Listen to my question carefully and take your time to answer it. The first piece of sample apparatus which you made by hand, did that have in it the cut out?

A It did not.

Q It did not?

A No.

429 Q Did you make a sample that did have the cut out later?

A We put the cut out on this sample later; on this same one we put it on later.

Q Did you see that original hand made sample of yours tested, that identical one on an engine?

A I did.

Q Now, when you first saw it operated on an engine, did it have the cut out on it or was the cut out not present?

A The cut out was not present in the first trial.

Q How long after the first trial was it before that was added?

A I would say two or three days, maybe.

Q Then did you see it tried again with the cut out?

A Yes, sir.

Q Where was that?

A At the same place on the fifth floor of the new building in the old plant at 15th and Western Avenue.

Q How did that cut out, as incorporated in that first sample, and as tried at that time, compare with the cut out as it appears here in this Plaintiff's Exhibit 12?

A It was a different apparatus.

Q In what respect different?

A The push rod had two wedges on it, a wedge above and a wedge below, and on the valve rod that went below the push rod, it carried a bracket and roller, and when the valve rod moved the valves it moved up this second wedge on the push rod and converted the cut out so that the push rod did not engage with the push finger, but slipped over the top of it.

Q Now, aside from that difference, can you discover any other differences between this Plaintiff's Exhibit 12 apparatus and the apparatus as you first made the sample of it, and aside, also, from the matter of the shape of the cross section,

of part of this casting, the part which you refer to in your
430 previous testimony, and as marked with the figure "3" in red on the drawing; aside from those two matters were there any differences which you can determine between Exhibit 12, and the apparatus as you first made a sample of it?

A As near as I can see they are substantially identical.

Q What became of that first sample apparatus after it had ben tried on the engine, first without the cut out and then with the cut out?

A From my personal knowledge I don't know.

Q What did you do with it when you had finished with it?

A I think it was left on the engine, if I recollect rightly, and that is so far as I had anything to do with it.

Q Did you put it on the engine yourself, or assist in doing so?

A I am quite sure I did. I think Mr. Kane and I put it on together.

Q Which Mr. Kane is that?

A Mr. E. J. Kane.

Q Now, do you know whether the Webster Company after this first sample had been made and tested, as you have described, whether they then manufactured equipment conforming with the sample?

A Yes, sir.

Q When did they begin that manufacture, if you know?

A Why, I would say within, say, two or three months, maybe after that first sample was made up.

Q How long did it take you after Kane had finished the drawing and turned it over to you to make up this first sample?

A I would say it was finished within three weeks.

Q How soon did the test follow its completion?

A Immediately.

Q Did you do all of that mechanical work yourself in
431 making that first sample?

A I rather doubt whether I did any of it. I think some of my men made it.

Q Were they working under your supervision or not?

A Yes, sir.

Q Now, when was it you made that first sample as you have described?

A You mean the date?

Q Yes, the date if you can give it.

A I could not give the date.

Q Exactly or approximately.

A I could not give you that date exactly, but if the date on the drawing is correct—I don't know that—I would have to take somebody else's word for that—I probably started within a day or two after that day.

Q Aside from the date upon the drawing, what is your recollection as to the year in which you did this work?

A It was in the early part of 1908.

Q What is it enables you to say that it was in 1908?

A I may be wrong; I am only guessing at it. It was

shortly before we moved to Tiffin. I think that was in 1909, if I remember rightly.

Q Which was?

A When we moved to Tiffin. That would make this date 1909. I think I made a mistake there.

Q Do you know when it was in 1909 you moved to Tiffin, as you say?

A I went down in June, 1909.

Q When you say 'We moved to Tiffin', whom do you mean by 'we'?

A The Webster Electric Company, at that time the Hertz Electric Company.

432 Q What relationship was there between the Hertz Electric Company and the Webster Manufacturing Company?

A The Hertz Electric Company were an offshoot of the Webster Manufacturing Company.

Q What was the business of the Hertz Electric Company?

A To manufacture magnetos.

Q Was that its sole business, its only business?

A Its sole and only business, that is, of the Hertz Electric Company.

Q You say you went to Tiffin in June, 1909, for the Hertz Electric Company?

A Yes, sir.

Q What did you do in Tiffin when you first went there?

A We started to make, or we tried to make, high tension magnetos.

Q How long did you remain in Tiffin after you went there?

A Four years.

Q Now, was this first sample of the Kane Machine, as made by you or under your direction, was that made before or after you went to Tiffin?

A Before.

Q How long before?

A Probably four or five months before.

Q I call your attention now to a pamphlet containing some cuts, marked Plaintiff's Exhibit 16, and I ask you to look at the cuts and state whether you recognize the apparatus shown therein?

A Yes, I recognize it.

Q What is that apparatus?

A It is part of the apparatus that we furnished to the Harvester people.

Q When did you begin to furnish the Harvester people with apparatus, if you know?

433 A I would say probably in the fall of 1908.

Q How does this apparatus, shown upon this pamphlet, compare with the first sample of the Kane equipment which you made?

A Just a moment—I guess I am wrong on this—no, it is not the piece of apparatus I thought it was. I did not get all the details of it. I cannot say from memory what time we did furnish the Harvester people with this. Some of the apparatus seems to have been made previous to the time that Kane's drawing was made, but otherwise it seems, the plug seems to be practically the same thing that Kane got up; that rotor there—that is punched out to lighten it up, was, I think, made before Kane's drawing was made.

Q You have not answered just my last question, although you have, perhaps, in part. Let me ask you this: Will you look at the cuts marked 'Illustration No. 4', and 'Illustration No. 5', and state how the apparatus shown in those cuts compare with the first sample of Kane apparatus, which you say you made just a few months before you went to Tiffin in June, 1909.

A It is different.

Q In what respects different?

A The cut out itself is mounted on the magneto arm, whereas in the Kane—the sample we made from the Kane drawing, it was mounted, as I say, on the valve rod.

Q Now, aside from that matter as to the detail of the cut out, how does this apparatus, shown in Illustration 4 and Illustration 5, compare with the Kane apparatus as you made it a few months before going to Tiffin in June, 1909?

A I would say it was similar.

Q To what extent similar?

A Identically the same thing.

434 Q Now, a few moments ago when I asked you, I think when the apparatus shown in this Plaintiff's Exhibit No. 16 was first manufactured and sold to the Harvester Company, you said, I believe, that your recollection was that it was in the fall of 1908?

A No, I had reference to previous apparatus at that time. I see this is different. This was made evidently in the spring of 1909; in the spring or summer of 1909.

Q You say that this first sample of the Kane apparatus

was made by other men under your direction? What men were those?

A The workmen in the shop in the magneto department.

Q Mechanics, that is?

A Mechanics, yes, sir.

Q Now, aside from Kane who made the drawing and turned it over to you and aside from you who either did the work or directed the work of mechanics did anybody else have anything to do so far as you are aware with the making of the original drawing, as you have identified it, or with the maintenance of the first sample equipment?

A No, sir.

Q What was the result of the test of this Kane equipment as installed on the engine and tried out at the Webster factory here on the fifth floor, in so far as it being a demonstration of the efficiency of the equipment was concerned?

Mr. Bulkley: I object to that as leading and suggestive.

A It was very successful.

Mr. Bulkley: And I ask that the answer of the witness be stricken out.

The Court: Read the question.

(Question and answer read.)

The Court: ~~It~~ may stand.

435 Mr. Williams: Q After the Webster Company, or the off-shoot, as you call it, which was first named the Hertz Electric Company, moved to Tiffin, Ohio, can you say how many equipments substantially like this first sample of the Kane equipment were manufactured and sold by the Webster Company?

A I could only make a guess at it, but I should say there were thousands of them.

Q How soon did you begin to manufacture them in quantities?

A Probably within two months after we moved to Tiffin.

A August or September, 1909.

Q When you started in to manufacture them commercially at that time, at what rate did you continue to manufacture them then? I don't mean exactly, but approximately.

A Oh, from 25 to 50 a day, I would say.

Q Did the quantities continue on at the same rate?

A We probably increased them. I am quite sure we did.

Q You remained in Tiffin, you say, four years?

A We remained four years, yes, sir.

Q What did you do then?

Statement of Evidence.

A We moved to Racine, Wisconsin.

Q Do you recall when that was?

A Five years ago, 1913. I am quite sure we moved to Racine in June, 1913.

Q Had the name of the company continued as the Hertz Electric Company all that time?

A No, sir.

Q What did it become?

A It became the Webster Electric Company.

Q When was that?

A Soon after we moved to Tiffin. We only had that for a few months.

Q The Hertz name?

436 A The Hertz name, yes, sir.
Mr. Williams: That is all.

Cross-Examination by Mr. Bulkley.

Q Did you say that Mr. Milton was your superior?

A My immediate superior, yes, sir.

Q The one to whom you reported and from whom you received instruction, is that right?

A Yes, sir.

Q You have not said anything about Mr. Milton in connection with the work that was done in connection with this magneto, have you?

A I have not.

Q Why not?

A Because at that time Mr. Milton's attention was occupied by something else, to the exclusion of everything else.

Q Absolutely to the exclusion of everything else?

A Absolutely to the exclusion of everything else.

Q You never told him a thing about this at all?

A Not a thing.

Q And he was your immediate superior in the company?

A He was my immediate superior in the company.

Q This was a very important matter, wasn't it?

A It was not as important as other things that we had in the fire at that time.

Q It was a very important matter, wasn't it?

A It was quite important, yes, sir.

Q And it was quite seriously important, wasn't it?

A Yes, sir.

Q Now, if you will be fair with me we won't take very long. Why was it so seriously important as you now say it was?

A It was seriously important because we were having trouble with it.

Q Did you know that the International Harvester Company had said that they did not want them any more, or something like that?

A Only by hearsay.

Q You knew it by hearsay?

A Yes.

Q Do you know whether Mr. Milton ever saw either one of those drawings, or not?

A I rather doubt whether he ever did.

Q You rather doubt it. Now, why do you rather doubt it?

A Because Mr. Milton was away a great part of the time.

Q He was away?

A Yes.

Q How frequently was he away from, say, January 1, 1909, until August 1, 1909?

A Very probably away half the time.

Q Where did he go; do you know?

A No, I don't.

Q He was away so frequently and so continuously that it is your thought and your opinion now that he did not have any opportunity to see those drawings?

A He may have had the opportunity, but I doubt whether he did, though.

Q I am asking for your reason, upon which you express your doubts that he saw them?

A I don't remember that he saw them.

Q But you say that you doubt that he saw them?

A I doubt it, yes, I do doubt it.

Q What is the reason for that doubt?

A Because my memory does not recall any time when I showed them to him.

Q Couldn't he have an opportunity to see those drawings without your having shown them to him?

A He might have had, yes.

Q Again I ask you why it is you doubt his having seen them.

A That drawing, if I remember rightly, was in my pos-

session about that time until the plug was manufactured. I hardly think it was out of my possession.

Q You are sure about that, are you?

A No, I am not sure; I am telling you my best recollection.

Q You are reasonably sure, are you?

A I am not reasonably sure at all. I am giving you my memory.

Q Is that your memory—

A That is my memory.

Q That it was continuously and all the time in your possession?

A Yes.

Q Which drawing?

A The yellow drawing here.

Q That is Exhibit 17?

A Whatever the exhibit is, the yellow drawing.

Mr. Williams: I think that is 18.

The Court: That is right.

Mr. Bulkley: I beg your pardon; 18. This No. 17, did you have possession of that one?

A I don't think I ever saw that one.

Q Now, this white one, was that in your possession all the time?

A I don't think I ever had that drawing. I don't believe I ever saw it.

Mr. Williams: What number is that?

439 Mr. Bulkley: This is Exhibit 17 now shown to the witness.

The Court: 17 in large figures.

Mr. Bulkley: Q. Now, what was the matter which exclusively occupied the attention of Mr. Milton?

A We were perfecting or getting up a high tension magneto for the automobile trade at that time, and that is what occupied his attention, and also mine a good share of the time.

Q During what period of time was that?

A How long did it take, you mean?

Q No, during what period of time was it?

A Oh, probably from the fall of 1908, until we moved down to Tiffin in 1909 in June. I would say it was longer than that. I would say we were at it nearly a year.

Q Did you hear Mr. E. J. Kane testify yesterday?

A I did.

Q Did you hear him tell something about the apparatus which Mr. Milton had asked him, Mr. Kane, to take up to Milwaukee?

A I can't recollect that. I can't hear all the testimony over there. There may have been quite a bit I missed.

Q You didn't hear that?

A I don't think I did. I don't remember that.

Q Do you know anything about Mr. Milton having instructed Mr. Kane to take the apparatus up to the experimental department at Milwaukee of the Harvester Company?

A I don't know anything about that.

Q Do you know of any attempts that were made by Mr. Milton or by the Webster Company to solve the difficulties in connection with the low tension magneto?

A Yes.

Q Did Mr. Milton have anything to do with that?

A Yes.

Q During what period was that?

440 A Some time previous to the time when Mr. Kane tried to solve it.

Q How long before that?

A Oh, probably three or four months.

Q Not after three or four months. Give the date, please. Fix it, not as to Mr. Kane having solved the difficulty, but the date.

A The dates back ten years are very indefinite to me.

Q You don't have any trouble in fixing it by Mr. Kane, what he did?

A I have Mr. Kane's drawing here. I said Mr. Kane's drawing was about all I could go by.

Q It was three or four months prior to that date?

A Three or four months prior to that date, yes, sir.

Q That would make it along in what month of the previous year?

A The last part of 1908.

Q Make it a little more definite than that, than the last part.

A I can't make it any more definite than that.

Q You would not want to say that Mr. Milton was not doing anything at all in the latter part of 1908 with refer-

ence to improving the low tension magneto, to take out of it the difficulties which were inherent in it?

A I would not like to say that he was, no, sir.

Q I asked you if you would state that he was not.

A I thought you asked me if I would like to say that he was not.

Q We will avoid that discussion. Will you say that in the latter part of 1908 Mr. Milton was not engaged in an endeavor to improve the low tension magneto?

A I will not.

441 Q But you know that he stopped any attempt to make improvements in the low tension and didn't make any improvements in the year 1909?

A I am quite sure there were no improvements made in the year 1909.

Q Was he making any attempts to make any improvements?

A I don't know what attempts he was making.

Q You don't know whether he was or not?

A No.

* * * * *
Q Did you ever talk with him about this improvement which you say Joe Kane got up?

A I don't recollect that I ever did.

Q Would not you have been likely to have talked with your superior about a matter of that grave consequence?

A I rather doubt whether I would.

Q Why not?

A Because I was allowed considerable discretion in my work. On lots of things I never consulted him at all, or even Mr. Webster. If I saw anything I thought would benefit the firm, why, I went to work and did it.

Q Who gave you those instructions; your superior, Mr. Milton?

A No, sir.

Q Where did you get those instructions?

A I didn't get them at all.

Q You did that of your own initiative?

A Yes, sir.

* * * * *
Q Did you have any high tension customers at that time at all?

A Not at that time, no. Later on we did.

Q How long after that?

A Oh, somewhere along probably in May.

442 Q What customer was it that you got in May, 1909, for high tension magnetos?

A The Cadillac Motor Company.

Q Did you sell them any high tension magnetos then?

A No, sir.

A We have a contract with the Cadillac people for a certain number of magnetos per year.

Q How many?

A I could not tell you from hearsay. It would not be evidence.

Q Go ahead. Nobody is objecting to it, Mr. Munn.

A 30,000.

Q 30,000?

A Yes, sir.

Q Conditioned upon what?

A I don't know the conditions of the contract. I never saw it.

Q They never bought the 30,000?

A No, they didn't.

Q They only had 12 of them?

A I don't know whether it was 12 or 6 or 3.

Q I thought you said 12 or 6.

A I don't say any number. They might have had a half a dozen.

Q Now, taking the term customer to mean some concern which regularly bought magnetos, which had been determined and decided as of practical value, did the Webster Company ever have any customers in the light of that definition for any high tension stuff whatever?

A I don't know what definition of the word "customer" you mean.

443 Q I told you. I thought I told you to consider the definition which I gave, or the explanation of what I meant by customers.

A We have never sold the Cadillac people any magnetos.

Q Of anybody else?

A Any high tension magnetos?

Q High tension magnetos.

A Up to that time we hadn't or up to there.

Q Or any time.

A We have sold the high tension magnetos since.

Q Since when?

A Since this question came up. You are speaking of 1909, are you not?

Q Yes.

A Since 1909, or 1910, we have sold high tension magnetos,—a great many of them.

JAMES A. MUNN, resumed the stand for plaintiff, and further testified as follows:

Redirect Examination by Mr. Williams.

Q Mr. Munn, you were asked by Mr. Bulkley relative to the Milton high tension machine, and the Cadillac contract. Won't you tell all that you know about that matter, particularly in so far as its engaging the attention of Mr. Milton and Mr. T. K. Webster is concerned?

A We began the construction of that type of magneto quite some earlier than this trouble we had with the Harvester low tension magneto, and even while Mr. Milton was away in Europe I had worked on it myself, and when he came back we devoted a great deal of time to it, and as it got toward the last end, toward the completion of the magneto, he and I both devoted almost all of our time to it. I did have a little time to devote to the low tension, and he, I don't
445 think, had any time; and we finally finished it up,—oh, I would say somewhere along about May. And Mr. Webster, as I understand,—

Mr. Bulkley: Q What year?

The Court: 1909. What year?

A 1909, yes sir. And Mr. Webster, I understand, got a contract from the Cadillac people, from a sample that he took over, that I had made, of this high tension magneto, and made a contract with them to furnish 30,000 a year of them, and we immediately went down to Tiffin and leased a building and put in machinery, and started to manufacture that machine; but as a matter of fact we never did manufacture more than a very few of them, because we failed on it,—we lost our contract.

The Court: The fact of it is, the magneto did not work properly?

A The magneto did not work properly, did not give satisfaction.

Mr. Williams: Q What in a general way is the difference between a high tension machine and what you have referred to as a low tension machine, or between the high tension machines which we have been discussing here?

A There was very little difference in the construction of the frame of the magneto itself, but it carried a make-and-break apparatus, for making and breaking the primary current, on the face of the magneto, and an outside secondary coil for producing a jump spark, in place of a make-and-break spark, which is done mechanically in the cylinder; the high tension magneto produces what they call a jump spark, a very high voltage, across the spark points,—also in the cylinder of the engine.

Q In the high tension system are there any mechanically moving parts in or associated with the plug at all?

A No, sir.

Q Now, you say that you saw Milton during this period, say from January to June, 1909, practically every day, and that he was at the factory of the Webster people; in what connection did you see him? That is, what was the occasion of your seeing him thus frequently?

A Consultations on this high tension magneto.

Q What were you doing with it?

A I was developing it.

Q Building it?

A Personally, yes, sir.

Q What, during that period, did Milton say about the high tension machine, that would indicate the extent to which he was interested in it, to the exclusion practically, as I think you said, of other matters? In other words, what was it that led you to say that he was devoting his time practically exclusively to that high tension machine, in so far as it came to your attention?

A The fact that he, whenever we were together, talked of almost nothing else. The low tension magneto at that time was hardly mentioned. In fact, I believe as a matter of fact that Mr. Webster had almost given up the low tension magneto, to give his whole attention to this high tension magneto.

Q Do you know anything about the number of low tension machines which the Webster Company had been selling prior to June, 1909, as compared with the figure 30,000 per year

which I think you said was the amount of the Cadillac contract which was eventually entered into?

A I think we might have been manufacturing, after this Kane plug was gotten out,—

Q No, no; I am asking you particularly about the time before that.

A Before that?

Q That is, when you were selling the old Milton low 447 tension machine, on the order of this Plaintiff's Exhibit No. 11; how did the number of those machines sold by the company compare with the figure 30,000 per year?

A I would say we were making perhaps twenty a day, of those styles of magneto; I hardly think more.

Q Did you see Mr. T. K. Webster frequently during this period in 1909? Before you moved to Tiffin?

A Just previous to that I think I saw him quite considerably, yes.

Q Did you talk with him or he with you in such a way as to enable you to say whether his interest apparently was in high tension or in the low tension machines?

Mr. Peaks: I object.

The Court: Milton?

Mr. Williams: No. Mr. Webster, Mr. T. K. Webster.

The Court: You asked him if he talked with him? He may answer that.

A Yes, I did.

Mr. Williams: Q Now, what was his talk with you relative to the high tension machine?

A Very flowery. He had every hope of success on it.

(Objection by defendants' counsel and motion to strike out the answer as not responsive. Objection sustained.)

The Court: Give us the substance of what was said.

A The substance of his conversation was that he considered the thing a great success, and that it would be a success.

Mr. Williams: Q Did he talk figures at all?

A How is that?

Q Did he talk figures at all, dollars, or machines?

A No. Only the size of the contract; that is all.

Q What did he say about that?

448 A He said he had a contract for 30,000 machines.

Q Did he talk about the amount of money involved?

A No, he did not say anything about that. I did not know what they were getting for the machines, at all.

Recross Examination by Mr. Peaks.

Q Mr. Kane spoke of his having been under the direction, or turned over by Mr. Milton, I understod him to say, to a Mr. Adam Munn. This witness has said his name is James A. Munn. Are you referred to sometimes as "Adam" Munn?

A No. I do not think Adam entered into the conversation at all. My name is James Abbott—James Abbott Munn. They generally call me Abbott Munn.

Q Were you the only Munn that was employed about the plant at that time?

A Yes, sir.

Thereupon plaintiff's counsel offered in evidence as Plaintiff's Exhibit No. 19 the pages of the memorandum book to which Mr. Maurice Kane had referred, and containing the memoranda which he read in connection with his testimony.

Objected to by defendants' counsel—objection overruled, but ordered that the entire memorandum book go in as a physical exhibit

ERNEST BRUCE, a witness called on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 42, residence Racine, Wisconsin; superintendent Webster Electric Company. Has been connected with the company since February, 1909. When he went to work for it, it was known as the Webster Manufacturing Company, then as the Hertz Electric Company, and later as the Webster Electric Company.

449 Witness had charge of the manufacture of the magneto ignition apparatus which the Webster Manufacturing Company was manufacturing and selling at the time he began work for it. It was a machine known as the square bar machine, square machine; had straight magnet bars; had what they called three pole pieces, and two big coils, one on each side, and inductor, and shaft; and part of a bracket which the company furnished at that time that held the springs, also push finger.

Witness was shown the pamphlet marked Plaintiff's Exhibit No. 13, and testified that the magneto shown in the cuts

in said pamphlet was the one which the company was making when he began work for it. The Company continued the manufacture of this type of magneto until about August, 1909. The company then began to manufacture a round machine, a machine that was called the "F" type, that had round pole pieces. Webster Company was located in Chicago at 15th and Western Avenue when witness began work for it in February, 1909. Moved to Tiffin, Ohio in October 1909, being one of the last of Webster employees to go. The manufacture of the "F" type of machine had been commenced in Chicago before witness moved to Tiffin. The first order was for 1000 machines. Made about 40 a day. Continued to make the type "F" machine after witness moved to Tiffin. Made them for a year or two afterwards. He could not state the exact number made but it might have been about 8,000 or 10,000.

Describing the type "F" machine made before the company moved to Tiffin in the fall of 1909, the witness said:

"A Well, it had round pole pieces, round poles; it had straight bars; it had three pole pieces there; and the coils were mounted on the middle pole piece. We made the inductor, shaft and the push finger and the springs; but in this type "F" there were two studs that held the springs, and the pole pieces, themselves."

Witness saw one of the entire equipment on an engine at the old Webster place at 15th and Western Avenue a couple of months after he went to work there in February, 1909. Saw it in operation there and the engine ran fine. That was about all he knew about it.

Being shown the cuts Nos. 4, 5 and 6 in pamphlet marked Plaintiff's Exhibit No. 16, witness said:

"This is the type machine that was made after that, this other one, No. 13; this was after that one, made after that 450 one, this type of magneto."

Witness further stated that the illustrations numbered 4, 5 and 6 in the pamphlet Exhibit No. 16 represented the same type of machine that was manufactured at the rate of 40 or 50 per day before the Webster Company moved to Tiffin.

Witness knew Mr. E. J. Kane. First met him about the middle or latter part of February, 1909, on the fifth floor of the Webster Company's place, understood he was a salesmen—also saw him doing drafting. Witness also knew Mr. John L. Milton. Made his acquaintance at the Webster Manufacturing Company about 1906. He was in or about the Web-

ster plant in 1909 before the move to Tiffin. Had a desk in the main office on the first floor.

Witness also knew Mr. Abbott Munn. He was connected with the Webster Company in the spring of 1909 before the move to Tiffin, and was located on the fifth floor of the Webster Company.

No cross-examination.

ARTHUR C. KLECKNER, a witness called on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 28, residence, Racine, Wisconsin, chief engineer Webster Electric Company. Connected with the company since August, 1909. Company located at Tiffin, Ohio when he began to work for it. Said company moved to Tiffin in the early part of the summer of 1909 and had not entirely completed its moving when witness entered its employ. Company was then engaged in preparations for the manufacture of a high tension magneto for the Cadillac Motor Company and was making parts to fill that contract. That continued until the early part of the fall of the following year, 1910. In September or October, 1909 the rest of the equipment was moved to Tiffin and the manufacture of the type "F" low tension magneto was undertaken at the Tiffin plant. The type "F"

magneto was a straight bar magnet magneto, having two 451 tripolar pole pieces having curved ends. The equipment furnished included the magneto proper, the inductor, spring arm, push finger, and springs. These parts were furnished by the Webster Company. Then there was the igniter plug, which supported the magneto, the push rod, and operating mechanism, furnished by the International Harvester Company. There were several thousand of these equipments sold.

The manufacture of the high tension magneto was entirely abandoned, because, outside of the first half dozen or so samples that were furnished, they were not satisfactory. Even those did not operate satisfactorily and no more were built.

Being shown the pamphlet marked Plaintiff's Exhibit No. 16, and asked to state how the apparatus there shown compared with the type "F" apparatus which witness had stated

was manufactured and sold to the extent of several thousand during the years 1909 and 1910, witness said:

"This illustrates the type "F" magneto of which I have spoken".

Witness was acquainted with Mr. John L. Milton. First met him at the factory of the Webster Electric Company at Tiffin, Ohio, probably in September of 1909,—the latter part of August or in September. Mr. Milton was at that time engaged in an attempt to perfect the high tension magneto, which the company was trying to build for the Cadillac Motor Company. Witness did not see Milton every day, the days that he did see him, only for a short time. Mr. Milton had a room at the front part of the second floor, and as a rule that room was kept locked, but witness occasionally went in and was more or less familiar with the work he was doing. Mr. Milton was at that time testing and manufacturing the experimental coils for use with the high tension magneto.

Mr. T. K. Webster, Jr. was in charge of the plant at Tiffin when witness went to work there in August 1909.

Witness was acquainted with Mr. E. J. Kane. First met him at the Webster Electric Company in Tiffin, the latter part of the year 1909, sometime between September and November. Did not see him very often. Witness thinks that on several occasions Kane went over with witness and others (us) the details connected with the perfection and manufacture of the type "F" magneto, and conducted some experiments on the proper design of the springs to secure proper action from the magneto; he also went out in the territory to handle any difficulties which might arise in connection with the installation or use of the magneto.

No cross-examination.

—TOWNER K. WEBSTER, called as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 69, residence, Evanston, Illinois; occupation, manufacturer. President of Webster Electric Company, also president of the Amalgamated Machinery Corporation of Chicago. Connected with Webster Electric Company since date of incorporation. Incorporated it. First called the Hertz. Was also connected with the Webster Manufacturing Com-

pany for about 35 years; was president of that corporation. The business of the Webster Manufacturing Company after 1900 was chiefly the manufacture of grain elevator and conveying machinery; also the manufacture of gas engines. Witness became interested in the manufacture of magneto ignition equipment for gasoline engines. Being asked to state when and under what circumstances that was, the witness said:

"I cannot give you the exact dates. I know the circumstances. We were making a gas engine, and our New York manager called my attention to a magneto that was used—had been used—on a well drilling machine, with apparently great satisfaction. I became interested enough in it to acquire the rights, and we commenced to manufacture the large square machine."

453 That was a different machine from any that has been referred to in the testimony.

Witness is acquainted with John L. Milton. Asked to state when and under what circumstances he made his acquaintance, witness said:

"I cannot give you the dates, but after we had acquired this first machine, Mr. Milton came in to our office and stated that he did not see any way of getting around the patents that we had acquired, and he would like to come in with us."

Witness further testified regarding Mr. Milton, as follows:

"Q. Did Milton become associated with the Webster Manufacturing Company as the result of this interview with him?

A Yes, sir.

Q What did he do then?

A He began the development of this magneto, improving it.

Q Did his work result in the manufacture by the Webster Manufacturing Company of a so-called Milton magneto?

A Yes, sir.

Q Were those sold by the Webster Company?

A Yes, sir.

Q To whom, first?

A Why, the first large customer, and possibly the first customer, was the Harvester people.

Q International Harvester Company?

A International Harvester people.

Q Can you describe briefly the first form of Milton machine, as sold to the Harvester Company?

A Why, I am not a technical man; no, sir, I do not think I can describe it. I can possibly paint a picture of it. It was a square machine, and quite large,—square magnets.

454 Q Can you state when or approximately when you first began to sell that original Milton machine to the International Harvester Company?

A Why, I cannot give you any definite date. I should say in 1906 or 1907, or somewhere along there.

Q Was that a successful machine, so that you continued—

A No, sir.

Q —indefinitely, to manufacture and sell it?

A No, sir.

Q What can you say as to its being unsatisfactory? What was the fact in that regard?

A Well, the whole magneto business was in a flux at that time; they were using batteries, and yet they wanted magnetos; and it was a progressing upwards; everybody was trying to build something better, and we kept at it, and the only reason why we got the business of the Harvester for a time was it was probably the best machine on the market at the time.

Q You say that it was not, however, satisfactory. How was that matter brought to your attention?

A Well, I was in quite close touch with the Harvester people, very naturally, because we wanted that business; it was nearly the whole of our business; and there came a time when they were having so much trouble that we had to improve it.

Q When you say the whole of your business, do you mean the whole of the business of every character—

A Oh, no.

Q —in which the Webster Manufacturing Company was engaged?

A No, sir, no, sir.

Q Just what did you mean?

A Simply the business of making magnetos.

455 Q The whole of the magneto business, then?

A Yes, sir.

Q How critical did the unsatisfactory character of this original magneto machine become, in so far as the Harvester Company's business was concerned?

A I became satisfied that we had either got to improve it, or lose the business.

Q How did you become satisfied of that?

A Well, through the information that came to me from the Harvester Company either by letter or conversation.

Q I show you a paper dated March 15, 1909, purporting to be a letter signed by H. A. Waterman, and marked as Plaintiff's Exhibit No. 1, and will ask you whether you can identify that as something which you saw at or about that date.

A I do not remember seeing this letter, no, sir.

Q Are you familiar with the substance of this letter? Have you read it over?

A Yes, I have.

Q Have you read it over today, or quite recently?

A Yes.

Q Was the substance of the report as to the unsatisfactory character of the Milton machine, and the purpose of the Harvester Company to discontinue its use, brought to your attention at or about the date of this letter?

A Yes, sir. I think so.

Q I now call your attention to another paper, this purporting to be a letter on the letterhead of Webster Manufacturing Company, and addressed to International Harvester Company, Chicago, and signed, if I read the signature correctly, 'T. K. Webster, Pres.' Can you identify that document?

A This letter was written by me, yes, sir.

Q When?

456 A The date here is April 29, 1909.

Q Now, this letter which you have just identified reads, in part: 'I enclose herewith photographs of the Harvester 6-H. P. engine with the latest attachment, which we are sure will suit all interested in this proposition. As already stated we have covered all the points of objection very properly registered by Mr. H. A. Waterman.' Can you tell us what photograph was enclosed with that letter, or what was shown in the photograph thus enclosed or attached?

A I suppose it was a photograph. I do not know what it was.

Q I show you a photograph marked in this case as Plaintiff's Exhibit No. 5, and ask you whether you can identify either the photograph or compare what is shown in the photograph.

A This looks like the improved machine, as we made it for the Harvester, after their criticism.

Q Now, when was it that you first saw a machine of that

improved form, and as shown in this photograph, Plaintiff's Exhibit No. 51

A I suppose it was in March, 1909.

Q Where did you first see a machine of that character?

A Do you mean the whole thing attached to a gas engine, or—

Q Yes, I mean that magneto equipment, substantially as shown in that photograph, and attached to a gas engine.

A The first one, I think, that I saw, was when the Harvester Company sent an engine down to our works, and we had it put onto the 6-horse power engine there.

Q You say it in operation, did you?

A Yes, sir.

Q On that engine, at that time?

A Yes, sir.

Q What, if any, steps did you take following your having seen that magneto equipment in operation on that engine at your factory toward bringing the new equipment to the attention of the International Harvester Company, or its officers or employees?

A Why, I got Mr. Cavanaugh, the active man in the Experimental Department, to come over with Mr. Kane, and see it in operation.

Q And he came?

A Yes, sir.

Q And saw it?

A Yes, sir.

Q Was that Mr. Maurice Kane?

A Mr. Maurice Kane.

Q Now, what following that did you do or direct to be done in interesting the International people in this new equipment?

A We commenced the manufacture. I gave orders to manufacture it right away.

Q Was there any further submission of it to the International people after Mr. Cavanaugh came and saw it in operation at your plant?

A Was there any what?

Q Was there any further submission of this equipment to the consideration of the Harvester Company, in any way?

A I remember Mr. Cavanaugh saying that they would want fifty a day. It quite impressed me, because I thought that was quite a sizable order at that time; and we followed it up, as we would follow up any enterprise of that kind. I kept going to Milwaukee, and watching it, together with the engineers, in the usual course.

Q Can you describe or state what equipment is referred to in this letter of yours dated April 29, 1909, to the International Harvester Company, in which you refer to an enclosed photograph of the Harvester 6-horse power engine, and in which you say that you have covered all the points of objection very properly registered by Mr. H. A. Waterman, and then go on to describe the machine, saying, first, 'As regards the rigidity we have attached the magneto now by two 5/8-inch bolts, and so on; 'We are sure you will be satisfied on the point of rigidity. Second, we control this with the exhaust rod, so you only spark when there is charge in the cylinder. Third, we have made the magneto smaller; so that we believe now that you have got exactly what we have all been working for'. The question is, what machine was referred to in that letter of April 29, 1909.

A It was the machine referred to in this photograph.

Q This photograph you have in your hand?

A Yes, sir.

Q And marked Plaintiff's Exhibit No. 5?

A Yes, sir.

Q This letter that I just called to your attention, your letter of April 29, 1909, is marked Plaintiff's Exhibit No. 2, is it not?

A Yes, sir.

Q Will you look now at this pamphlet marked Plaintiff's Exhibit No. 13, and state whether you recognize the equipment shown in the cut forming a part of that pamphlet?

A Yes, I recognize this.

Q What magneto is that? What is that?

A It is a magneto attached to an engine.

Q What magneto is that?

A One of the earlier types. I think it was a Milton magneto.

Q You mean by that the Milton magneto manufactured by the Webster Company?

A Yes. One of the earliest types.

Q And that is the one that was found to be unsatisfactory to an extent such that your business in it was going to be lost?

459 A Yes, sir.

Q Apparently?

A Yes, sir.

Q Now, when you learned of the complaints and objections and practically the decision of the Harvester people

not to use this equipment further, what did you do about the matter?

A Why, I remember calling both Mr. Kane and Mr. Chiville, and saying, 'Here'—

Mr. Bulkley: Which Mr. Kane?

A Mr. Joe Kane and Mr. Chiville. And if I remember right I offered them a prize for the man that would get up the best design for this improvement.

Mr. Williams: Q What did you say?

A That is what I said. Do you want me to repeat my language, as near as I can?

Q Why, the substance of it, if you do not remember the exact words. Did you say anything to them, for example, about the troubles, or about loss of business, or anything relating to the subject? If so, what did you say, as nearly as you can remember?

A Well, I do not pretend to remember a conversation back nine years, but I know this: I may have said to them, 'We are in trouble here with this, and we have got to do something'. I presume possibly I did. But I remember distinctly saying: 'Why, bring down a new design here;' I offer a prize for a new design, to these two men.

Q Now, did you do anything, so far as you know, toward endeavoring to get up a machine?

A Yes.

Q —which would overcome the difficulties?

A Yes. They brought the design down, if I remember rightly, very quickly. I imagine it was on a Monday. Of course I am not sure about the date; but it was very
460 soon after this, any way, they both brought in a design, Mr. Chiville and Mr. Kane.

Q In what form were those designs?

A Well, I do not remember.

Q I mean, did they bring apparatus?

A Oh, no.

Q Or drawings, or—

A Not apparatus. Of course it must have been drawings. I do not remember. But I do remember distinctly that we decided—I say 'we'—I suppose I put it up to our engineers, as I always did, in that kind of a case; and Mr. Kane's design was accepted as much the better. Mr. Chiville himself said it was much the best.

Q Now, how did that design, as thus submitted by Mr. Kane, compare with the apparatus shown in this photograph,

Plaintiff's Exhibit No. 5, which you say was installed on an engine at the Webster factory and tested?

A I think that perhaps it was just the same.

Q Will you look at this drawing, marked Plaintiff's Exhibit No. 18, and state whether you can recognize and identify it?

A I do not remember anything about the drawing.

Q Will you look now at the illustrations, numbers 4, 5 and 6, of this pamphlet marked Plaintiff's Exhibit No. 16, and state whether you recognize the apparatus there illustrated, and, if so, say what it is?

A This appears to be (indicating Exhibit shown witness) a picture, and an instruction sheet regarding the improved type of Webster magneto, which we sold the Harvester after the other style was condemned.

Q How does the apparatus shown in the cuts of that pamphlet compare with the apparatus which was first tested, as you have said, on the engine at the Webster Manufacturing Company's factory, and as shown in the photograph, Exhibit 5?

A I think it is the same machine.

461 Q I call your attention now to a letter on the letter-head of the Webster Manufacturing Company, dated June 3, 1909, signed 'Webster Manufacturing Company, T. K. Webster', and marked Plaintiff's Exhibit No. 7, and ask you whether you recognize and can identify that?

A Yes; I think this letter was dictated by me, yes, sir.

Q Is that your own personal signature?

A No, that is not my signature. It was probably left for someone to sign, but I remember the incident.

Q What was the incident that you recollect, as you say?

A Well, that they were wanting magnetos on those larger engines, and that we had Kane go over there and take the measurements.

Q This letter reads: 'Mr. Joe Kane'—it is addressed to W. A. Cavanaugh, Harvester Building, City.
'Dear Mr. Cavanaugh:

Mr. Joe Kane went over to the Deering Works and took the measurements for the 15-horse power engine, and we have completed the drawings. We will be able to put the magneto on nicely and yet not interfere at all with the change speed device. We will proceed at once to get out the patterns, and rush the work as rapidly as possible.'

What is this Deering Works that is referred to there?

A The Deering Works of the Harvester Company, in Chicago.

Q That is, of the International Harvester Company?

A International Harvester Company, yes, sir.

Q And part of the plant with which, or the organization with which, this Mr. Cavanaugh was connected?

A Yes, sir.

Q Now, what form of magneto was it of which you wrote that the measurements had been completed, and the drawings made, and so on, at that time?

462 A We were only making one type of magneto. That was this type.

Q Let me ask you to describe, in your own way, the construction of that magneto, which you say was proposed by Kane, and then tested on the engine at your plant. Will you describe that machine, that is, the machine illustrated in this photograph, Exhibit 5, which you say corresponds with the machine as tested on the engine at your plant.

A It is extremely difficult for a man who is not a mechanic—

A I can say this, and perhaps it will answer your question: It was extremely vital to the interests of the Webster Manufacturing Company that we make good on this magneto. Now, on the practical side, one of the great difficulties was the attachment. I was in close touch with Mr. Cavanaugh, of the Experimental Department, and I knew what these difficulties were. It was solving a problem that was troubling the whole country, because you get a magneto on a farm engine, and it won't work, and there is trouble right off; and I kept in touch with the trouble, by sending this man Kane out, you know, through the country, and I was continually in touch with that. Now the thing that impressed me about this whole business was that we had got to attach it in a substantial manner. The next thing was, we had got to make it smaller; it was too big. And this machine that was produced by Mr. Kane met the requirements. Now, all that I know in connection with any of the business is the results. The details I am not familiar with.

Q Now, what was the result?

A The result was that we got the business.

Q And then what? Did you keep it.

A Yes, we kept it. Of course we had to keep on improving, but we kept it.

463

Cross-Examination by Mr. Bulkley.

Q Mr. Webster, you testified, did you not, in the interference proceeding between a patent of Mr. Milton and an application of Mr. Kane's?

A I do not know that I did.

Q You do not know?

A No, sir.

Q Don't you know that you testified in an interference case?

A No, sir.

Q In connection with this matter?

A No, sir.

Q Well, let me try and refresh your recollection. Don't you remember that in November of the year 1916 you went to Mr. Williams' office to testify in some case?

A I do not remember it.

Q Now, Mr. Webster, to refresh your recollection a little further, let me show you what appears to be a printed record in behalf of Kane, in an interference between Edmund Joseph Kane, against John L. Milton. Now, just glance that over, and see if you do not find your memory so far refreshed as to be able to tell us that you testified in that case?

(Record shown witness.)

A Well, if I did testify, and it is printed, it is possible I did. I do not remember it, sir, though. (Examining record.) Is my testimony here, Mr. Bulkley?

Q I thought I handed it to you, Mr. Webster.

A I do not see anything here.

Q Perhaps I did not give you the right place. I perhaps did not give you the right place (indicating in record.)
464 Is my testimony here, Mr. Bulkley?

Q I thought I handed it to you, Mr. Webster.

A I do not see anything here.

Q Perhaps I did not give you the right place. I perhaps did not give you the right place (indicating in record).

A Well, this looks very much as if somebody took my testi-

mony. I haven't any recollection of it, however. Mr. McCaleb ought to know, if he is here.

Q Well, don't you remember, Mr. Webster, of—

A I haven't the slightest recollection of giving that testimony.

Q Is that so?

A I do not know why, but it is extraordinary. In 1916, that was?

Q In November, 1916.

A Can't Mr. McCaleb refresh my memory in some way about it? I do not remember.

Q Don't you remember of having gone over there to Mr. Williams' office in connection with this matter of controversy between Kane and Milton?

A No, I do not.

Q And talking with Mr. Williams about it?

A I do not, at all.

Q At any time?

A No, I do not remember it.

Q Well, when did you have your attention directed to this—

A What?

Q When did you have your attention directed to this matter of Kane's invention after 1909?

A Well, I remember, at some meeting, of Mr. Maurice Rosenwald and Mr. Brown, their calling our attention to the fact that we had got to buy this patent. That is about the first I heard of it.

465 Q What patent?

A The Kane patent.

Q Prior to that time hadn't you heard anything, hadn't it been called to your attention between 1909 and—

A I do not remember it.

Q —and that date?

A I do not remember it.

Q Did you ever have any negotiations with Mr. Milton with reference to the purchase of the patent, or application, patent rights?

A Yes, oh, yes.

Q Well, when was that?

A Oh, a series of years, yes.

Q Commencing when?

A Oh, I should think commencing with 1906, perhaps.

Q Do you remember having entered into a sort of a trust agreement?

A What is that.

Q A sort of a trust agreement, in which Mr. Williams was made a trustee?

A Yes, I think there was something of that sort at one time, between Mr. Teagle's—I think so.

Q Do you know anything about what patents were included in that trust agreement?

A No, sir.

Q Do not remember anything about what patents were included with and embodied in that agreement?

A No, sir. That is, when you say that, do you want me to give their numbers, or what they cover, or anything?

Q No.

A No.

466 Q Of course not.

A I could not describe them.

Q I am asking you to state generally.

A I cannot state generally.

Q In any descriptive way that is possible.

A I cannot state.

Q What those patents were about, or what they related to.

A No, I cannot do it.

Q Do you remember having any talk with Mr. Milton, or writing him any letters about taking out patents?

A I presume I wrote him letters, and talked with him quite a number of times.

Q Do you remember anything about it, now?

A I do not.

Q Anything specifically about it, in one way or the other?

A I do not.

Q Mr. Webster, do you remember seeing a patent which had a machine,—descriptive and illustrative of a machine something like that, shown in this patent that I now hand you, at any time?

(Patent shown witness.)

Mr. Williams: Will you make the record show the number of that?

Mr. Bulkley: Q. Will you read that, Mr. Webster, the number on that? Or I will.

A The patent office number is 1,096,048.

Mr. Bulkley: 1,096,048.

A Mr. Bulkley, I do not want to seem not to answer your

questions, but this is my plan of business. I hire a patent lawyer, and I turn over everything to him, and I do what he says; now, I do not pay any attention; I cannot say whether I ever saw this patent or not.

Q Well, with whom did you advise?

467 A I advised with Mr. Williams, for one; and formerly I advised with Mr. Linthicum.

Q Now, with whom did you advise at the time when you entered into this trust agreement, in which Mr. Williams was made trustee, and in which you agreed to pay Mr. Milton a considerable sum of money for certain patents? With whom did you advise in connection with that transaction?

A When we paid him \$25,000? Is that the time that you refer to?

A A large sum of money, yes.

A Why, Mr. B. V. Becker was my personal attorney, in all my matters; and Mr. Williams was at that time my patent attorney, and the patent attorney of our company.

Q What did you understand were the inventions which were to pay that large amount of money for?

A My experience with patents has always been, Mr. Bulkley, that we have paid the money, and the inventor got the cash; and that is just the case with this, up to this time. Now, I paid no attention to the thing. Mr. Becker, as my adviser, contrary to my business judgment, said we had better pay it and get rid of the thing; and I said, 'All right, I will accept your advice'.

Q Twenty-five thousand dollars?

A Yes, sir.

Q You proposed to pay \$25,000 for certain patents that you did not know anything about?

A Exactly so.

Q Is that it?

A Yes, sir.

Q Exactly?

A Yes, sir.

Q Don't you remember of ever having any conversation, talks, with Mr. Milton, or letters which you wrote to him, relative to taking out a patent on this very thing?

A I do not.

Q Which solved the difficulty—

A I do not.

Q —in connection with these Harvester objections?

A I do not. If that date is right, if that is in 1914, though I am not quite sure of my dates, there was quite a time when the relations between Mr. Milton and myself were greatly strained, and I only had dealings with him practically through my attorney.

Q Now, when was that?

A Well, I say, if you have got any letters, I think I can give you somewhere around the dates. From 1910, along there for some little time.

Q For how long a time?

A How long a time?

Q Yes.

A I cannot give you dates.

Q I am not asking you for exact dates.

A It may have been one year, or two years or three years.

Q And you cannot tell any closer than that?

A Not much closer, no. There was a time when we took back Mr. Milton, and then we separated again.

Q When did you take him back? About when was that?

A That must have been about—Mr. Milton got back from Europe, I imagine, in 1911; and I should think in 1912, probably, we took him back, for a while.

Q Did you have anything to do with his going to Europe? Did he go there on a business for you?

A I am very sorry I did not have anything to do with it.

Q He did not go there on your behalf?

A No, sir.

469 Q Or on behalf of the Company?

A He did not.

Q In any respect?

A He ran away. And went there, left me right in the hole, in the worst kind of a hole.

Q Now, when did he come back, do you remember?

A Well, I should say it was about 1911 or 1912; probably 1911.

Q You remember that, don't you, quite clearly?

A Well, it must have been about that.

Q That it was about 1911 or '12?

A Yes, I think so.

Q Don't you know he got back as early as October of 1910?

A No, I do not know it.

Q You won't say that he did not?

A No, no, I won't say he did not.

Q Did he apply to you for a position, or restoration with the Company, when he got back from Europe?

A Some time after he got back, what date I cannot say, he brought to me another world beater, and we fell for it. That is the fact. He thought that we would get back some of our money. It was again a mistake.

Q How do you know it was a mistake, Mr. Webster?

A How do you know any mistake? When you—It failed, and did not make any money, and we had to abandon it. That is all.

Q Well, what patent are you talking about?

A I cannot tell you. I will describe the thing to you.

Q All right. Describe it.

A Well, it was a little coil that he put onto the spark plug of an engine; and he had us all buffaloed; we went down to the patent office, all our attorneys; I went, and took an order for about—I thought I had made six hundred thousand dollars on the thing; and then it failed.

470 Q Now, you know enough about what occurred at that time, that it was this coil in connection with this machine?

A With which machine?

Q What you are talking about. The machine you are talking about.

A What machine are you talking about?

Q I don't know.

A Then I don't know.

Q Very well. You say you were buffaloed?

A Yes.

Q And deceived, by him?

A No I do not. I think he deceived himself, and he deceived us.

Q In connection with this coil?

A A little coil, that went on the spark plug of an automobile. It looked like a great invention. Even as great a man as Mr. Williams was fooled by it.

Q What was that coil? What did he tell you that coil was going to do? Do you remember that?

A What?

Q What did he tell you that coil was going to do?

A It was going to revolutionize the automobile spark plug business.

Q Well, in what respect? Do you remember anything about that?

A Why, my memory is fairly good about the general circumstances.

Q Oh!

A Yes.

Q As late as nineteen hundred and what? When was that? About when?

A I say I do not pretend to give you dates.

Q About when? Don't you have any recollection at all?

A Well, in about 1911 or 1912.

471 Q. When Mr. Milton came back from Europe, which you say may have been as early as October of 1910, what did he do?

A I do not know what he did.

Q Don't you know anything about it at all?

A No.

Q Did you have anything to do with taking him back with the company?

A Not that I know of. My recollection is that he brought us this little coil.

Q The first thing, when he got back from Europe?

A I do not know whether it was the first thing or not.

Q. Don't you know whether you had anything to do with taking him back in your company again when he returned back from Europe?

A Now, Mr. Bulkley, I have told you my first recollection is his coming back and presenting this coil, this little coil that went onto the spark plug of an automobile. Now, that is a distinct recollection, because that was the opening wedge of what we thought might be another arrangement with Milton.

Q Another arrangement with him? When was the other? Was there any other arrangement with Mr. Milton?

A I should say there was.

Q When was the arrangement made with him after he got back from Europe? About when?

A I am talking about Mr. Milton had an original arrangement with me and with our company.

Q Before he went to Europe?

A Yes, sir.

Q Yes, and you say he ran away?

A Yes.

Q And left you in the lurch?

A Do you want to know about it?

A No.

472 A Well, if you do, that will illuminate the thing. If you do not, why—

Q Now, when did you make another arrangement with him, after his return from Europe?

A Why, we tried to make an arrangement on this little coil that went on the spark plug.

Q And is that all you tried to do with him?

A Until, I think, he got his twenty-five thousand dollars. That is my next—

Q And that is all of his connection with the company—

A Yes.

Q —up to the time that he got his \$25,000.—

A That is my recollection.

Q Wait one moment.

A That is my recollection.

Q Between the time—Now, wait one moment, if you please.

A Yes.

Q Between the time that he came back to you, and had this coil, up to the time when he got this \$25,000, all that you know about his having done anything is in connection with this coil; is that right?

A That is all that registers in my mind, yes, sir.

Q You are pretty sure about that, aren't you?

A Why, I do not claim to be sure about anything. But you ought to wait a minute.

Q I thought you said you were through.

A You are trying to get the things that register in my mind, aren't you?

Q Yes.

A Is that what you are trying to get?

Q I am trying to get what you remember.

A Well, that is it.

473 Q And I am trying to show what you do not remember.

A There are a lot of things I don't remember, I presume, but I do not remember, from the time that he brought that coil until we made the arrangement to pay him \$25,000, I don't remember any thing about my connection with Mr. Milton. There may have been—

Q And you do not remember that during that interval between the time of his return from Europe and when you paid him \$25,000, of his ever having done anything, for and in behalf of your company, except in connection with that coil?

A That is all I remember.

Q Wasn't he chief engineer of that company?

A Why, no, he was not chief engineer of the company, after he went to Europe.

Q He was not chief engineer after he got home?

A No; just experimenting on that coil, as far as I know, that I can remember.

Q Don't you know that you sent him all over the country, Mr. Webster, to refresh your recollection, on this trip and that trip, in connection with very many and divers matters, other than this coil?

A No, sir.

Q You don't remember anything about that at all?

A No.

Q How?

A No, sir.

Q Now, what was his connection with that company before he went to Europe?

A He was in charge of this high tension magneto.

Q Is that all?

A Well, practically all. He was developing this magneto; but when we struck this big thing, as we supposed, in the high tension, why, that was so big a thing and so promising
474 that he gave practically his entire attention to it.

Q You know that, now, and you remember it, do you?

A I remember it. Certainly I do.

Q And you are pretty definitely clear in your mind about it?

A Yes, sir.

Q Are you?

A Yes, sir.

Q That he did not have anything to do with the other department of work of the company, as you now quite clearly remember, except in the development of this high tension magneto; is that right?

A Now, listen.

Q Now, just answer the question, please.

A Now, listen. This is what I say: I say that he commenced the development of the low tension magneto, and he was the chief man in that, until the time that he decided—he developed this high tension, that we thought was the world beater; now, that was such a big thing that it overshadowed all the other. I do not think Mr. Milton did anything, practically, but that; he bought a car, and put it on, and it was such a success that we thought it was going to sweep the country; and I went down to Detroit, and got this large order,

after a great deal of—after various experiments, that we thought were entirely conclusive.

Q Now, Mr. Webster—

A Yes, sir.

Q You say that when he first got back from Europe,—or, before he went to Europe he did at some time or other, in connection with the affairs of this company, have to do with the low tension?

A Yes, sir.

Q To what extent?

A Oh, very largely in the building up of it, until it was really not a success, you know. We were striving after something, and not getting anywhere; and then he developed 475 this high tension, which we thought was a great thing.

Q And then after he started to develop the high tension you remember now, do you, quite definitely, that he did not have anything more to do with the low tension work?

A Practically not, no.

Q Well, now, when you say 'practically not', did he to any degree have anything to do with the low tension work?

A Well, Mr. Bulkley, you must know that a man in my position as President of two or three companies, this one thing, this high tension machine overshadowed everything; it was going to be a million dollar gamble.

The Court: Read the question, and let him answer that.

(Pending question read as follows:) "Q Now, when you say 'practically not', did he to any degree have anything to do with the low tension work?"

The Court: That is, while he was engaged in this high tension business.

A To a very small degree, if any.

Mr. Bulkley: Q And your recollection is now quite distinct that he did not have anything to do, but to a very small degree, if any—

A Yes.

Q —with reference to the low tension work?

A Yes, sir.

Q After he commenced to work on the high tension magneto.

A Yes, sir.

Q Now, do you know anything about what work he did, at all, on the low tension, after you commenced to work on the high tension?

A Why, I have answered that he practically did none, so far as I know.

476 Q Whom did you consider to be the one in general charge of your development and experimental work at that time, before Mr. Milton went to Europe, and after he commenced to work, as you think, almost exclusively, if not entirely, upon the high tension magneto?

A I had Mr. Kane, and Mr. Chiville, and Mr. Munn.

Q Well, you heard the testimony of Mr. Munn, didn't you, or did you?

A Well, I heard some of it.

Q Do you recollect it?

A Well—

Q Or any part of it, do you think?

A Why, I recollect, I think I recollect what I heard when I was here.

Q Did you hear Mr. Munn say that Mr. Milton was the chief engineer, and his superior?

A He may have said that.

Q At that time? I asked you if you heard him say it.

A I am not sure I heard him say it.

Q What did you say?

A I am not sure that I heard him say it?

Q If he said that, was he wrong about it?

A I do not think his title was Chief Engineer.

Q Well, was he right in saying, if he did say it, that he was his superior and the one from whom he got instructions?

A It is rather a difficult question to answer yes or no, because it was such a small organization; Mr. Milton was the man who was developing a magneto, the low tension magneto, until the time when the high tension magneto absorbed his attention. Now, I do not know whether I can answer it any better than that or not. Your Honor, this is the first time I have ever been on the witness stand. You will have to excuse me.

477 Q What was the name of the product, or of the machine under which you sold, or, which you sold to the International Harvester Company? What did you call it?

A We called it, at first, the Milton.

Q Didn't you call them that up to and through the year 1909?

A I do not know—

Q And prior to that time?

A I think so.

Q Yes.

A Yes.

Q You did for a long time?

A Yes, sir.

Q About when did you make the change?

A Well, I should say that—

Q And call it the Webster Magneto?

A I should think that was about 1909 or 1910.

Q In 1909 or 1910?

A I should say so, yes, sir.

Q You think it was then that you changed?

A Well, the dates you can get, my dear sir.

Q I am asking you for a fact.

A Well, I say I cannot tell.

Q Very well. You knew, didn't you, that you were selling the International Harvester Company a low tension magneto?

A I did.

Q You knew that, at least, didn't you?

A I did, yes, sir.

Q And you knew that for a certain length of time you called it the Milton magneto?

A Yes, sir, that I knew.

Q Do you mean to say that after he commenced to work on the high tension magneto that you stopped using the name "Milton magneto?"

478 A I say I cannot tell you the date we stopped.

Q I didn't ask you what the date was, at all.

A Yes. Then what is it?

Q I asked you if you stopped using the name 'Milton' on the magnetos which you were selling to the International Harvester Company when he commenced to work on the high tension magneto?

A I cannot tell you.

Q Now, Mr. Webster, I invite your attention to this circular, which I believe you have seen before, or referred to before, which is marked Exhibit 16, and which purports to have been issued and distributed by the International Harvester Company in September of 1909. What was the name of the product used in that circular to designate the low tension magneto—

A Milton.

Q Which you were selling to the International Harvester Company?

A Milton. It says so, right here.

(Witness indicates Plaintiff's Exhibit 16, handed to him.)

Q Now, you do not know after having looked at that cir-

cular, I understand, when it was, or how soon after 1909, or how soon after—

A I do not.

Q —that you changed to the name 'Webster magneto'?

A No, I do not.

Q And you haven't any idea how soon you changed?

A Well, within a range of ten years.

Q You know you did not change immediately after Mr. Kane made this invention, as you say, did you?

A I do not know.

Q You do not know anything about it at all, do you?

A Well, you are asking me dates, and I am telling you I do not know.

479 Q I am not asking you dates.

A Well, you are asking me times. I do not know.

Q Don't you know at all?

A I have told you, within a period of ten years.

Q You cannot approximate the time within a period of ten years?

A Well, I say ten years. I am sure that is right.

Q You say you selected Mr. Kane and Mr. Chiville to enter into competition with one another to produce a design to overcome the defects in your product concerning which the International Company had complained; is that right?

A Yes, sir.

Q And you offered them a prize?

A Yes, sir.

Q For the best one?

A Yes, sir.

Q Did you give Mr. Kane any prize?

A I do not think so.

Q Now, you say you referred to your engineers these two designs, to see which one was the better of the two; is that right?

A I think my testimony was that I probably showed to them; but I haven't any definite recollection of that.

Q But you think you did?

A Yes, sir.

Q Now, to whom did you refer it?

A I do not know.

Q Well, what engineers did you have there at that time?

A We had probably two or three engineers.

Q Who?

A Well, there was the engineer of the Webster Manufacturing Company.

480 Q Who was that?

A Well, it may have been Mr. Perkins, of the Company.

Q Did you look upon Mr. Perkins as an engineer?

A Yes, sir.

Q Of the Company?

A Yes, sir.

Q What other engineer did you have at that time?

A We may have shown it to our chief draftsman; I do not know.

Q Who was that?

A I do not remember, at that time.

Q You do not remember his name?

A No, sir.

Q You have no recollection, in connection with the submission of this design to any of them?

A No, I have not.

Q But you do remember now that you went to Mr. Chiville and to Mr. Munn?

A No, Mr. Chiville.

Q To Mr. Kane?

A Mr. Chiville.

Q I beg your pardon.

A And Mr. Kane, yes.

Q And that you asked them to produce a design.

A Yes, sir.

Q How do you remember that so clearly?

A Why, I do not know whether you can say why one thing fastens on your brain.

Q Well, I am asking you; if you say you haven't any way of ascertaining—

A Well, I say I do know positively that I went up there and spoke to those two men, and said, 'Here, now, we
481 have got to get up something'; and as I say, I think I offered them a prize, yes, sir.

Q And that is all you remember, is it, about what happened or took place in connection with the development of this man Kane?

A In that particular case yes. In this particular case that you refer to.

Q Yes. That is the only one I am referring to.

A Yes.

Q That is all you remember?

A Yes.

Q Not a single fact or circumstance or incident or any-

thing connected with it, except that one thing, is there, in your mind now?

A If you are speaking about that afternoon, or morning; if you carry it along further, there may have been other incidents.

Q Well, what other incidents?

A I do not know.

Q You carry it along a little further, and tell us what incidents there are in your mind, if there are any there.

A Well, I remember, I think I can remember sending him to Milwaukee, but that is a little hazy. Those were routine things, that he did; that was part of his business.

Q What did you send him to Milwaukee for, do you remember?

A Why, to put it on the engine up there, after we developed it.

Q Do you remember talking to Mr. Milton about this thing, at all?

A I haven't any recollection.

Q You will not say that you did not talk with him, will you?

A No, I won't say.

Q You won't say but what you talked with him frequently about it?

A No, I don't think I talked with him frequently.

482 Q Didn't you write him frequently about it?

A That I don't know. If he has got letters, that will show better than my saying.

Q I am asking for your recollection.

A Yes.

Q About it, Mr. Webster.

A Yes.

Q You do not remember but what you might have talked with him several times?

A Oh, I might have. It is quite possible.

Q Do you remember anything at all that was said between you and Mr. Milton?

A About this thing?

Q With reference to this thing.

A I do not.

Q Not a single fact or circumstance or incident which enables you to say whether you ever did talk with him about it?

A I do not remember anything, any conversation with him about it.

Q Now, you do not remember any fact or circumstance at

all which enables you to say whether you ever did talk with him about it?

A No.

Q Or not?

A No, there is nothing.

Q Do you remember any conversation you had with Mr. Kane with reference to taking this invention of his?

A No, I do not. I do not remember that at all.

Q You do not?

A No, sir.

Q Do you remember telling Mr. Kane that you did not want any patent on it?

483 A No.

Q You did not tell him, so far as you now remember—

A No.

Q --anything about whether it was patentable or not?

A No, I do not remember any conversation of that sort.

Q You do not say but what there may have been such a conversation?

A Oh, there may have been, yes, sir.

Q Do you remember Mr. Kane ever talking with you about getting out any patent on anything?

A I do not remember anything of that sort.

Q Do you remember ever having talked with Mr. Kane, and telling him that you got sick of paying money for patents and you were not going to buy or negotiate for any more?

A I do not remember that.

Q Do you have any recollection now, Mr. Webster, as to where the defects were in the means by which the magneto was attached to the cylinder?

A In the original Milton?

Q Yes, in the original Milton.

A Well, the original Milton, as I remember it, was attached to a boss on the engine.

Q And it was the weakness of this boss, was it—

A No.

Q --which constituted the defect?

A No. The boss was small; the Harvester Company did not want to change their design, and we had to adapt it the best we could, and we were allowed to put it on a boss.

Q Now, I am trying to get from you what knowledge you now have.

A Yes.

Q Or recollection, concerning this defect.

484 A Yes.

Q Now, will you tell me to just what specific extent you have now a knowledge of that defect?

A It was an imperfect way of attaching it.

Q This boss was an imperfect way?

A No; the way we could get onto the boss and hold it was so imperfect.

Q What do you mean by 'get onto the boss and hold it'?

A Attach it to the boss.

Q To the boss?

A Yes.

Q Now, in your testimony in this interference, which you looked at a moment ago,—and which seems to have entirely escaped your recollection—

A Yes, sir.

Q —I find that you purport to have said, in answer to this question: 'Prior to the time Mr. Kane submitted his design to you, had you ever seen or heard of a low tension magneto construction of unitary type, that is, one wherein the magneto was mounted on an integral plug and bracket, and the movable electrode arm operated directly from the magneto rotor shaft, as you have explained'; and I find that you answered that you never had known of such a construction. Do you remember having testified to that?

A I tell you, that is the most extraordinary thing. I cannot remember it.

Q Well, if that question was put to you at that time, did you understand what you were talking about?

A Yes.

Q And you understand it now?

A Yes, sir.

Q Do you?

A Yes, sir.

485 Q And you understood that construction, at the time that Mr. Kane showed it to you?

A I don't remember his showing it to me.

Q You don't remember Mr. Kane having showed that to you?

A I do not remember seeing this sketch at all. I suppose that I did see it, and that I turned it over to the engineers, and we approved it, or I went down and showed it to Mr. Cavanaugh, and he approved it.

Q Now, at the time, Mr. Webster, that these designs were produced by Mr. Chiville, and Mr. Munn—

A Mr. Kane.

Q Mr. Kane.

A Yes.

Q Thank you—you knew enough about it to appreciate the fact to be that prior to that time there was no such thing known to you as a low tension magneto construction of the unitary type, that is, one wherein the magneto was mounted on an integral plug and bracket, and the movable electrode arm operated directly from the magneto rotor shaft, 'as you have explained'?

A Yes.

Q You knew at that time that no such construction was in existence?

A That I had not seen it.

Q That you had not seen it.

A Yes.

Q You know enough about that construction of this apparatus at that time to know that you never had seen that sort of a construction before.

486 A Yes, sir.

Q Now, did Mr. Kane tell you what he had developed, at that time?

A Mr. Bulkley, I have no recollection beyond what I have told you of that incident. My mind is almost a blank about it. All I know is I remember distinctly that it was a success, that it was brought before the Harvester Company, I presume by myself, because I did that; I went personally to see Cavanaugh; that is the way I did it; and that Cavanaugh's approval of it, to my judgment, settled the whole thing.

Q I am trying to get at what it was that Mr. Kane showed you, if you know.

A I do not know what he showed me. I do not remember of having seen—

Q How do you know, how do you know, Mr. Webster, that this design that was submitted ultimately to Mr. Cavanaugh, was the design that Kane had at the time that it was submitted by him in conjunction with Mr. Chiville? How do you know that it was the same design as that?

A Well, the same as you would; it could not be anything else but the same design. There was no legerdemain that he could change it to something else.

Q How do you know but what it was the design of somebody else that was adopted, rather than that which Mr. Kane produced in conjunction with Mr. Chiville?

A Well, it was done so quick, I don't think a man in one day could get up a design that was successful, and bring it out.

Q Didn't you hear Mr. Kane say that he had gotten it up in one day?

A He made the design in one day.

Q Yes.

487 A Yes, he said. Very true. But it was all done under our roof.

Q I am not inquiring as to where it was done.

A But it was done right in the—

Q Done in one day?

A Started right off, doing it, yes.

Q You asked him, one day, to get a design for you?

A Yes.

Q And he got it the next day?

A The day following.

Q Well, the day following.

A Yes.

Q All right. You do not know what that design was, or anything about it, do you?

A Yes, I do. Don't ask me a foolish question like that.

Q What was it?

A Of course I know.

Q What was it?

A It was the design that we adopted and put on our engine.

Q You are sure?

A Yes.

Q That it was the one you adopted?

A Yes.

Q And put on your engine?

A Yes.

Q Did he explain it to you at that time?

A I don't know whether he did or not.

Q Did you see any drawing of it at that time?

A I do not know whether I did or not.

Q Then how do you know that it was the same design, that he explained to you on that day, that subsequently went on the engine?

A Because, Mr. Bulkley, I know that that machine was

made right off from that design that was in the factory
488 there, and that I am practically sure I took that design
right down to Mr. Cavanaugh, and showed it to him, and
got his approval.

Q Now, you say you took 'that design.' What design?

A Why, the Kane design?

Q Did you take the drawing?

A I think so.

Q I thought you said you had not seen the drawing?

A Well, I say it does not register in my mind, as if you
would bring either of these papers (indicating) and say
"Did you see that paper"? I don't know that I did, but I
think that undoubtedly I did.

Q You say it does not register in your mind now.

A Yes.

Q That you took a drawing.

A No. I say—

Q Will you wait until I get the question?

A Well, I know just what you are going to ask.

Q And if I am not right, you can correct me.

A Yes.

Q Did I understand you to say that it registered in your
mind now that you took the drawing that Mr. Kane had sub-
mitted, or the design of Mr. Kane, down to Mr. Cavanaugh?

A I said that I thought I did.

Q Yes.

A I think I did.

Q Well, do you mean by that 'think', that it now registers
in your mind?

A No, no more than that; that is my language. I think
it is good English; I think that I did it.

Q Well, I am asking you.

A Well, that is all my answer. I think I did it.

Q You have expressed yourself frequently with reference
to what does or does not register in your mind.

A Yes.

489 Q Now, does that fact now register in your mind?

A No more than it did ten minutes ago.

Q Now, you say that you think you took a drawing, the
drawing which Mr. Kane had made?

A Yes.

Q Of his design?

A Yes.

Q Down to Mr. Cavanaugh?

A Yes.

Q Soon after Mr. Kane's design was approved?

A Yes.

Q Did you look at that drawing, if you did take a drawing?

A I suppose I looked at it, yes.

Q You don't know?

A That thing is not photographed on my mind. That whole matter of the engineering end I left to others.

Q Was it photographed—is it photographed in your mind now, Mr. Webster, that you took the Kane design down to Mr. Cavanaugh, soon after it was approved?

A I am morally certain I did. That is all I can answer you.

Q Did you know what that design was that you were taking down to Mr. Cavanaugh?

A Yes.

Q Or anything about it?

A Why, yes.

Q What was it?

A It was the same machine that we afterwards put on the engine.

Q Well, how did you know that?

A Well, the same as I have got ordinary intelligence, Mr. Bulkley. Now, if you do not understand that, I cannot give any other answer.

490 Q And you did not receive any explanation from Mr. Chiville or Mr. Munn or Mr.—

A Mr. Chiville—

Q Or Mr. Milton, or Mr. Kane, about this design, did you?

A Mr. Milton, and Mr. Munn—all of us undoubtedly talked about it.

Q But you don't remember anything about it?

A But, now, the thing that I remember, and if you had been in my place you would probably remember, was, I was after results; and when Mr. Cavanaugh approved of that, that ended it; the thing was banished from my mind; it did not make any difference how many drawings they had; I wanted the machine, and wanted it right.

Q Do I understand you to say that you did not, as you now remember, learn from Mr. Kane, from Mr. Munn, or Mr. Chiville, what Mr. Kane's design was?

A I undoubtedly—

Q The time that it was approved?

A I undoubtedly did not know all about it. I undoubtedly did. But the details of it I do not remember.

Q You say now that you cannot remember when it was that Mr. Kane submitted this design to you; is that right?

A Why, yes, I can fasten it in my mind, through that letter that they wrote us; and we commenced right away, when I saw the seriousness of the situation, I got right after these two men to make this design.

Q Now, Mr. Webster, you do not remember, as I understand you, anything about talks or correspondence with Mr. Milton regarding the taking out of a patent in connection with the subject matter of this means of fastening the magneto and plug to the engine?

A I do not remember anything about it. There may have been—

491 Q You never saw any such patents, did you?

A I do not say that.

Q I ask you, if you ever did or not.

A I do not know. My answer is, I do not know.

Q You never talked about it, did you, with Mr. Williams?

A With Mr. Williams?

Q Yes.

A I may have.

Q You don't remember of ever having talked about it at all?

A Why, no. It was not a matter of much importance at all.

Q Wasn't it a matter of some importance to you?

A Not—

Q When you bought the Kane application.

A Well, but as I said before, I follow the advice of my attorneys, just the same as I take medicine from my physician; I do not know.

Q Do you take the medicine that the patent attorney gives you, and say nothing?

A As a rule.

Q But pay the money?

A As a rule, yes, sir. I hire that kind of an attorney.

Q And you mean to tell me that you have—Pardon me for putting the question in that way—You do not remember of having talked with Mr. Williams at the time you were negotiating for the purchase of the Kane application?

A No.

Q You did not learn from him what money was to be paid for, did you?

A Well, at that time I was not as active in the Webster, the management—

492 Q Well, whether you were active or not, did you or did you not learn what the Kane application was about, and why you were going to pay this money?

A No, none of the details did I know.

Q Well, did you not learn the fact that you were going to buy the Kane application?

A Yes, I heard that.

Q And you did not have interest enough to inquire what the Kane application was about?

A Sure, yes.

Q And you did not inquire about it?

A Why, no. Why should I?

Q Now, you want to be understood, do you—

A Yes, I want—

Q —that when you went—Did you go to Mr. Williams' office at all about the purchase of the Kane patent?

A I don't remember.

Q Or application?

A I do not think so.

Q Who told you that you were going to pay a large sum of money for an application for a patent?

A Wait a minute. I did not pay it.

Q Well, the company?

A Yes, the company.

Q You learned that the company was going to pay a large sum of money for an application?

A Yes.

Q Did you?

A I was entirely satisfied to rest on that, rest it there.

A I am not sure but it was all paid for before I knew anything about it.

493 Mr. Bulkley: Q You are not sure about that?

A No, sir.

Q Did you ever learn that the Company had bought—

A Yes.

Q —a Kane application?

A Yes.

Q Who told you that?

A I think either Mr. Maurice Rosenwald or Mr. Brown, or Mr. Becker; I do not know.

Q And did they tell you who conducted the negotiations?

A Mr. Brown, I think, conducted them.

Q And he may have bought this application of Kane without saying anything to you about it?

A I do not know. Quite possible.

Q Or without your knowing anything at all about it?

A Quite possible. He had—

Q Do you think that is a fact?

A I rather think it is a fact. We have other—

Q I do not ask for the explanation.

A All right.

Q I ask you to answer the questions.

A Yes. All right.

Q Did you learn how much you paid for the Kane application?

A Yes.

Q How much was it?

A I understood it was \$12,000.

Q You have got some considerable investment in this Company?

A Yes.

Q And were President of it?

A Yes.

Q Weren't you?

A Yes, sir.

Q And you want us to understand that your company paid \$12,000?

494 A Yes.

Q For applications for patents?

A Yes.

Q When, as you have said, over and over again you have been bunkoed, for years, by inventors?

A Yes. Wait a minute.

Q When—

A I did not say 'bunkoed'.

A As near as I can recollect my language, it was that I was had been 'buffaloed.' I do not think that is as bad as 'bunkoed'.

Q All right, sir. Then we will substitute the word 'buffaloed' for 'bunkoed'.

A Yes. I do not think these men intentionally cheated me.

Q All right. You were buffaloed?

A Yes.

Q Your experience has been, and was, prior to the time that you paid \$12,000 for this, that the Company paid \$12,000 for the Kane application, your experience was that you had been buffaloed in connection with the purchase of patents and applications from inventors?

* * * * *

A My answer was that it is a fact that in most of my adventures in patents I have come out,—furnished the money, and ended by holding an empty bag. That is about what I said.

Q Now, notwithstanding your experience, we are to understand that you permitted your company, while you were President of it, to pay \$12,000 for an application for a patent, and you did not know what that application covered, or anything about it; is that right?

A Practically so. I am an optimist man.

495 Q Were you ever informed anything about this Kane application, and what it related to?

A Oh, in a general way, yes.

Q Who informed you about it?

A Oh, probably Mr. Williams and Mr. Brown. I have heard talks about it.

Q What did they tell you it was about?

A It was very essential to buy it, to protect our interests.

Q Was that all he told you?

A That was practically all, yes.

Q And did this occur before you bought it?

A Did what occur?

Q This conversation you had.

A I think so, yes, sir.

Q This conversation with Mr. Williams.

A I imagine so, yes.

Q And that was all the information that Mr. Williams gave you, before the \$12,000 was paid?

A All that I got.

Q And you never asked him for any information about Kane?

A I do not think so.

Q You do not say you did not?

A I am practically sure.

Q You are practically sure you did not?

A No.

Q At least, you have no recollection now of ever having asked it?

A No.

Q When did you find out that this Kane application, for which you paid the munificent sum of \$12,000, was an application of Kane, which covered this design, which he had made away back in 1909?

496 A I know nothing about the details of it.

Q You never learned that, did you?

A I do not know anything about the details of it.

Q Well, you never learned that specific thing, did you?

A What specific thing?

Q As to the fact that this application of Kane, which you bought and paid \$12,000 for, covered the design which Mr. Kane had submitted to you back in 1909? When did you learn that fact, if at all?

A I do not think that I ever knew it.

Q At any time?

A No, I do not know that—

Q You did not know it when you testified—

A I do not know that—

Q —if you did testify it, in this interference case.

A I have told you that that is the most extraordinary thing; I cannot remember going into Williams' office, and testifying; you have got it there in print, and I must have done it, but I do not know why I cannot remember it, but I cannot.

Q Now, Mr. Webster, let me ask you a general question: Do you mean to tell us that you learned that your corporation proposed to buy an application of Kane? Did you learn that?

A Well, I heard it, yes.

Q Who told you that?—

A I do not know.

Q —let me ask you, again.

A I should say one of three persons, Mr. Brown, Mr. Becker, or Mr. Maurice Rosenwald.

Q Do you know where it was that you were informed,—where you were?

497 A No, I do not.

Q When that information was given to you?

A No, I do not.

Q Nothing about that, at all?

A It may have been at a directors' meeting. I am not sure.

Q Do you know where Mr. Chiville is now?

A No, I do not.

Q Has he been here in the court room?

A I do not know. I do not think so. Not when I have been here, he has not.

Q I called your attention a few moments ago to the question and answer in this deposition which you gave, or what purports to be your deposition, in this interference case.

A I do not doubt it a bit.

Q And to make it more definite and certain, I will ask you if at the time Mr. Kane submitted to you his design you knew that there never was such a thing, so far as any information that you had about it, as a low tension magneto construction of the unitary type, that is, one wherein the magneto was mounted on an integral plug and bracket, with a movable electrode arm operated directly from the magneto rotor shaft, 'as you have explained'?

A I know of no such—

Q You knew of no such thing?

A Yes,—I knew of no such thing.

Q Now, at that time, if you had been shown such a construction, that is, in April of 1909, as that, you would be so far able to recognize it as to know that you had never seen such a thing before?

A I would be able to recognize it.

Q Yes, and you would know that you had never seen any such construction as that before?

A I believe I should remember, yes.

498 Q But you cannot say now whether Mr. Kane ever explained to you or showed you an illustration of any such construction in April of 1909?

A Oh, yes, I would say he did.

Q You say that he explained it to you at that time?

A I have no doubt but what he showed me the design, and gave me a general explanation.

Q I am not asking, Mr. Webster, as to what your doubts are about it.

A Except what?

Q Does it register in your memory—

A It does not register.

Q —that he did make such an explanation to you at that time?

A It does not register in my memory that I saw—that I had that talk with him, or saw the design.

Q Mr. Webster, didn't you at any time learn that there was a contest between Milton and Kane as to this design which he submitted to you in April of 1909?

A I think I learned of it through Mr. Brown.

Q About when was that?

A Oh, I should say two or three years ago. I cannot name any date.

Q What did Mr. Brown tell you?

A I do not remember.

Q If you have any such registration as to that in your mind?

A No.

Q Nothing at all?

A No.

Q He simply told you that there was a contest between Kane and Milton?

A Yes.

499 Q As to the inventorship of this subject-matter?

A Yes.

Cross-Examination Resumed by Mr. Bulkley.

Mr. Bulkley: If your Honor please, Mr. Milton has some letters in his possession, as I understand, which relate to this controversy, and is here under subpoena, our subpoena. He showed those letters to Mr. Williams and myself, and in the spirit of fairness I want to get those letters from Mr. Milton and let Mr. Webster see them. Mr. Milton, will you produce for us those letters which you showed to Mr. Williams and myself?

(Letters produced by Mr. Milton.)

Q Mr. Webster, did I understand you to say yesterday that you never saw or knew anything about, so as to identify it, this English patent of Mr. Milton's, which related to this thing which is involved here?

A I have no recollection of it.

Q You now say you have no recollection?

A No.

Q Now, Mr. Webster, I am going to show you the letter. Will you look at this letter (handing same to witness)? Is that your signature to that letter, and did you write it?

A It looks like my handwriting, and there is every indication that I wrote it.

Q Don't you know, Mr. Webster, whether you did write that letter or not? Have you any doubt but what you did write it?

A Yes, I undoubtedly wrote it.

Q And to whom was that addressed?

A John Milton.

Q The man who was then associated with you in connection with this magneto business?

500 A Yes, sir.

Mr. Bulkley: The letter identified by the witness is marked for Identification Defendants' Exhibit 4.

Q Did you write that at the Union League Club, or don't you remember about that?

A Of course I do not remember about it, but it undoubtedly was written in the Union League Club. I do not have their stationery in my office.

Q This letter says, 'Please write me at N. Y., 88 Reade Street, how the small sized magneto comes on, if you get a good spark'. Do you know to what that refers?

A I am not sure.

Mr. Peaks: What is the date of that, Mr. Bulkley?

Mr. Bulkley: The letter is dated April 16, 1909.

Q Don't you know that the small sized magneto was the low tension magneto, Mr. Webster?

A I should think not.

Q Then you think, do you, that this reference was not to the low tension magneto?

A That is my—

Q Do you?

A That is my present opinion, yes, sir.

Q Yes.

A Yes, sir.

Q You think it referred, do you, to the high tension magneto?

A I am of that impression.

Q Yes.

A Yes.

Q Have you got anything which registers in your memory as to what you referred to as the good spark?

A Why, I do not think there was any question about the spark of the low tension; and I know at about that time I was tremendously interested in this high tension.

* * * * *

501 Q The low tension magneto was what might readily be called a small sized magneto?

A Yes, it might be called a small size.

Q And the high tension magneto was a big one, or a larger one, was it not?

A I think not.

Q You think not?

A Yes.

Q Do you?

A I think not.

Q Well, are you reasonably sure?

A Yes.

Q About that?

A Yes, reasonably sure.

* * * * *

Q The high tension was smaller than the low?

A I say that is my opinion.

Q Yes.

A At the present time.

Q Exactly. Now, I call your attention to what purports to be a letter of May, 1909. Did you write that letter?

A Yes, I recognize this letter (indicating letter handed witness).

Q To whom was that letter written?

A Mr. John Milton, I think.

Q Don't you know it was written to Mr. John Milton?

A Oh, it undoubtedly was.

Q Do you have any recollection of having written that letter? Does it register on your mind in any way that you ever wrote any such letter to Mr. John Milton?

A Well, I wrote—

Q From New York?

A No, I do not remember especially that letter. I
502 know that I was there talking with the Fairbanks people.

Q What were you talking with the Fairbanks people
about?

A To interest them in the magneto.

Q In what magneto?

A The low tension magneto.

Q Now, who was Mr. Wells, referred to in this letter?

A I think he was President of the Fairbanks Company, of
New York.

Q And what business was the Fairbanks Company engaged
in at that time?

A In manufacturing or selling gas engines.

Q What kind of gas engines?

A Stationary.

Q Stationary gas engines?

A Stationary gas engines.

Q Were they not?

A Yes, sir.

Q Who was Mr. Haddock referred to in that letter?

A Who?

Q Haddock.

A Why, I imagine that Haddock was the head of that de-
partment. I am not sure.

Q The head of what—

A The gas engine.

Q The gas engine department?

A Yes.

Q Of the Fairbanks Company?

A I rather think so.

Q Now, what did this expression in the letter mean, after
the words 'all right', 'on Field?-B'?

A Field-Brundage.

Q What was the business of the Field-Brundage Com-
pany?

503 A Manufacturing gas engines.

Q What kind of gas engines?

A Stationary gas engines.

Q Then I understand that you say in this letter that you
had interviews with the Field-Brundage people?

A Yes.

Q With reference to the low tension magneto?

A Yes, sir.

Q In May, 1909; is that right?

A If that is the date of the letter.

Q Yes. Is that date of that letter in your handwriting?

A Yes, sir.

Q You haven't any reason to suppose that it was not written on that date?

A No.

Q Have you?

A No, I have no reason whatever.

Mr. Peaks: Has that letter been marked, Mr. Bulkley?

Mr. Bulkley: No, it has not. The letter identified by the witness is marked for identification as Defendant's Exhibit 5.

(The said letter was thereupon marked as Defendants' Exhibit 5, the first sheet being marked '5-a', and the second sheet '5-b').

Q I find here a reference to Bates & Edwards.

A Edmonds.

Q Edmonds?

A Yes, sir.

Q What were they?

A Manufacturers of stationary gas engines.

Q Now, do I interpret this letter right when I say that it states that the Field-Brundage Company would have Bates & Edmonds send one of their engines, that is, Bates & Edmonds engines, to put the spring type on? Is that your understanding of that letter?

504 A Shall I read it, that part?

Q Perhaps you had better read it, yes.

A (Reading): 'If the attachment of the magneto proves out all right on the Field-Brundage'—It is marked 'Field-B', 'they will put it on all of their engines. They will have Bates & Edmonds send one of their engines to put the spring type on'. Shall I read the rest?

Q What did you refer to as the spring type, if you now know or remember anything about it?

A Why, I understand that it was the Milton magneto.

Q Low tension magneto?

A Yes.

Q Was it not?

A Yes.

Q Now, this letter further says that 'the other style'—I do not know what this word is next after 'style', Mr. Webster. What is it? I will let you read it.

A (Reading:) 'The other style back of the fly wheel was so hard to start that they have not been selling any'.

Q Now, that referred to what, if you now have any recollection about it?

A That referred to one of the first styles, which we attached to the fly wheel of the engine, one of the old styles.

Q Now, after you have looked at this letter, doesn't it occur to you that you had a pretty familiar knowledge of what was going on mechanically at that time?

A Well, I do have a general knowledge, mechanically, of the engine,—of the magneto.

Q I show you another letter, Mr. Webster, which purports to be dated May 21, 1909, and which also purports to be written, I think, by Mr. Milton to you, and I ask you whether you have any recollection of receiving such a letter as this from him, after you have carefully read it.

505 (Letter shown to witness.)

A I have no doubt Mr. Milton wrote this letter.

Q Have you any doubt but what you received this letter from Mr. Milton?

A No reason to doubt it.

Mr. Williams: Q. Will you speak, just a trifle louder, Mr. Webster? What was that answer?

(Answer read.)

A I have no reason to doubt it.

* * * * *

(The said letter was thereupon marked as Defendants' Exhibit 6).

Mr. Bulkley: This letter says: 'We are today in receipt of a letter from Bates & Edmonds Motor Company, advising us that Fairbanks & Company had asked them to send us an engine for attaching our oscillating type of magneto'.

Q Do you know what was referred to by the expression: 'oscillating type of magneto'?

A I think it was the Milton type.

Q Well, what was that? Low tension, was it?

A Yes, sir.

Q And you have no doubt that on May 21, 1909, you received from Mr. Milton such a letter as this?

A I have no doubt of it.

Q Now, this letter further says, 'I am writing you today to urge your getting the Fairbanks Company to take the 150 magnetos that we have made especially for their small vertical

engines, for the reason that as soon as they see this oscillating type of magneto they will not consider this old type, whereas now they very probably would, especially if we quote them a low price'. Now, I will ask you, Mr. Webster, with respect to these 150 magnetos, what kind of magnetos do you understand they were?

506 A Why, my belief is that they were the magneto that was referred to in the other letter, and that was attached to the fly wheel.

Q Was it a low tension magneto?

A It was, yes.

Q Now, it says that this Company would not probably—'would not consider this old type'. To what did that refer, if you now have any recollection, as the 'old type'?

A Why, my belief now is that it was the type that was attached to the fly wheel.

Q I show you another letter, which purports to be dated May 22, 1909. Do you recognize the signatures—the initials, at the bottom of that letter, as having been made by you?

(Letter shown witness.)

A I think this is my signature.

Mr. Bulkley: Q Have you any doubt about it?

A No, I haven't any doubt of it.

Q To what type of magneto did this letter refer?

A High tension.

Mr. Williams: What was the answer?

Mr. Bulkley: High tension.

Q This letter says that 'Am glad to know that the Harvester magneto has been expressed'. What kind of a magneto was referred to as the Harvester magneto?

A I think that is the magneto that has been talked about in court as the Kane improvement.

Q I asked you what type of magneto it was. Was it a low tension or a high tension?

A I think it was a low tension.

Q Don't you know it was?

A I think it was a low tension.

Q Did you ever sell any high tension magnetos to the
507 Harvester people for stationary engine work? Don't you know that you never did?

A I do not think we ever sold any high tension, to the Harvester people.

Q Don't you know that you always sold and provided low tension magnetos for Harvester concerns—

A That was my—

Q —and builders of stationary engines?

A Yes, sir.

Q So that, Mr. Webster, don't you know that when you see the expression 'Harvester magneto', that it necessarily refers to a low tension magneto, and not to a high tension magneto?

A Practically sure.

Q Yes.

A Yes, sir.

Q Now, you refer in this letter to the foreign patents which you received at the hands of Mr. Chiville. What foreign patents were those?

A I do not know.

Q Do you remember anything about it?

A I remember nothing about it.

Q Who was the Mr. Chiville referred to in this letter?

A Mr. Chiville was an employee of our company, and has been referred to in these statements.

Q Is he the one who engaged in this prize contest of yours?

A Yes.

Q To make a design?

A Yes.

Q Did you request that Mr. Chiville be sent down there to you?

A I told him to come down.

Q Yes. You did not tell Mr. Milton—

A I do not know.

Q —to send him down?

A I should hardly think so.

508 Q Why would you say you would hardly think so?

A Because I was in command of the situation, and told my employes to go where I wanted them to go.

Q You have no doubt, Mr. Webster, but what you wrote this letter to Mr. John Milton, in Chicago?

A I have already so stated.

* * * * *

Mr. Williams: What is the date of that, please?

Mr. Bulkley: May 22nd, 1909.

(The said letter was thereupon marked as Defendants' Exhibit 7 for Identification.)

Mr. Bulkley: Q. I show you another letter, of May 21, purporting to be written on May 21. Is that your signature,

and have you any doubt as to whether that letter was written by you to Mr. John Milton?

(Letter shown witness.)

A The letters presented have been all from New York. I think that ought to be noticed. Yes, I wrote that letter.

Mr. Bulkley: The letter referred to by the witness is marked for identification Defendants' Exhibit 8.

(Said letter was thereupon marked as Defendants' Exhibit 8 for Identification.)

Q To what magneto did this letter refer?

A High tension.

Q Who was Mr. Toner?

A I do not remember.

Q —referred to in that letter?

A I do not remember.

Q You say that you thought that it was best to wire for Chiville to come on. That is the same Chiville—

A Yes, sir.

Q —to which the other letter referred?

A Apparently, yes, sir.

509 Q And you were reporting to Mr. Milton the fact that you had wired for Mr. Chiville to come on?

A Yes, sir.

Q Look at this letter, or copy of letter, and state whether you received any such letter as that from Mr. Milton, or can identify that in any way as having been received by you from Mr. Milton? (Showing letter to witness.)

A Why, I think I received this letter. I have no reason to believe I did not.

Mr. Bulkley: The letter referred to by the witness is marked for identification as Defendants' Exhibit 9.

Mr. Williams: What is the date of that one?

The Reporter: May 24, 1909.

(Said letter was thereupon marked as Defendants' Exhibit 9 for Identification.)

Q To what type of magneto did this letter of May 24, 1909 Exhibit 9 refer?

A The first part of the letter speaks of a high tension magneto.

Q Look at this letter; did you write this letter to Mr. Milton? Is that your signature to it?

(Another letter was handed the witness.)

A That is my signature, yes, sir. That is my signature.

Q You have no doubt you wrote that letter, have you, to Mr. Milton?

A I have no doubt I wrote that letter.

Mr. Bulkley: Marked for identification as Defendants' Exhibit 10.

Mr. Williams: Q What is the date of that, please?

Mr. Bulkley: May 1, 1909.

(Said letter was thereupon marked as Defendants' Exhibit 10.)

Mr. Bulkley: Q To what type of magneto did this letter refer?

510 A High tension.

Q I ask you to look at a letter which purports to be dated May 6, 1909. Is that your signature, and did you write that letter to Mr. John Milton?

(Another letter was handed to witness.)

A That is my signature.

(At this point a discussion took place as to the manner of presentation of letters to the witness, examination of them, etc.)

Mr. Bulkley: Q Now, I want you to look at a letter purporting to be dated May 6th, 1909. To what magneto was reference made in that letter?

(Letter shown witness.)

A This was the high tension magneto.

Q Do you know to what letter you refer as 'your letter regarding Bates & Edmonds' proposition'?

A That is one of the letters that you read to me. Bates & Edmonds were manufacturers of engines; and the letter that you have presented to me a few minutes ago referred to that, low tension magneto. Bates had—

Mr. Bulkley: The letter of May 6, 1909, referred to by the witness, is marked for identification Defendants' Exhibit 11.

(The said letter was thereupon marked as Defendants' Exhibit 11 for identification.)

Q I show you a letter purporting to be dated May 8, 1909. To what type of magneto did that letter refer?

(Another letter was shown to the witness.)

A It may refer to two magnetos; I cannot be sure. The magneto that was referred to as being mounted on the car was a high tension magneto.

511 Q And the other one.

A I do not know.

Q You do not know?

A No, sir.

Q Well, what do you think was referred to?

A I do not know.

Q You do not know anything about it?

A I do not know, is my answer.

Mr. Bulkley: The letter of May 8, 1909, referred to by the witness, is marked as Defendants' Exhibit 12 for Identification.

(The said letter was thereupon marked as Defendants' Exhibit 12 for Identification.)

Q I ask you to look at that letter, and ask you to what the reference is, made in this letter, purporting to be dated May 8th, 1909?

A High tension.

(The letter last shown the witness was thereupon, at the request of counsel, marked as Defendants' Exhibit 13 for Identification.)

Q Look at this letter, purporting to be dated 5/10/1909, and I wish you would read that letter, Mr. Webster.

(Another letter was shown to the witness.)

A (Reading:) '5/12/09. T. K. Webster, President Webster Manufacturing Company, New York City.

'Dear Mr. Webster: I have your two letters of the 8th inst., and in reply thereto desire to state that there have been ordered dies for the smaller type of low tension magneto which is to be used on the Harvester work. The smaller type magneto for jump spark work has been necessarily side-tracked for various interruptions. Just prior to taking our inventory we had to concentrate our attention on getting the equipment ready for Mr. Chiville. The inventory was a 512 serious interruption, and since then we have been very busy attending to the Harvester Company's demands. They have got intensely interested, telephoning several times a day, as well as telegraphing us from Milwaukee. This has all been supplemented by the letters, by many letters; so that you can readily see why we have concentrated our attention to this live business. We expected to make shipment today that will satisfy your immediate demands, which will allow us to go back to the high tension magneto tomorrow. I have done nothing further on the completion of the small high tension coil. I am pleased to note from your various communications that the magneto is working satisfactorily.'

Q What do you understand by the reference to live business in this matter?

A I suppose it means the Harvester business.

Q Yes, and that was the low tension business, was it not?

A Yes, sir.

Mr. Bulkley: The letter referred to by the witness is marked for identification as Defendants' Exhibit 14.

(The letter last shown the witness was thereupon, at the request of counsel, marked as Defendants' Exhibit 14 for Identification.)

Q Look at this letter of April 22, 1909, and tell us to what this letter had general reference, what type of magneto.

(Another letter was shown to the witness.)

A This letter was written by me, and referred to a high tension magneto.

Mr. Bulkley: The letter referred to by the witness is marked for identification Defendants' Exhibit 15.

(Said letter was thereupon marked as Defendants' Exhibit 15 for Identification.)

513 Q Mr. Webster, did you go to Europe with Mr. Milton and a patent attorney by the name of Alexander, in the year 1907?

A I did.

Q And what did you go there for with him?

A To show a low tension machine on a car.

Q On an automobile?

A Yes, sir.

Q And about how long were you over there with Mr. Milton and this Mr. Alexander?

A I was there, I imagine, a month, perhaps.

Q And then when you returned did Mr. Milton take up the magneto work of the Webster Company?

A I think he did.

Q You haven't any distinct recollection about when it was you got back?

A Yes—I think he did.

Q Have you any recollection as to about when it was you got back from Europe?

A I said I was there about a month.

Q Oh, I beg your pardon. Let me ask you, Mr. Webster, if you can read drawings, understand drawings, mechanical drawings, when you see them.

A I do not read them.

Q You do not understand them?

A Well, that is not the right question. A man can understand a thing partly, and not entirely.

Q Yes.

A I am not a technical man.

Q All right.

A And I do not read drawings at sight.

Mr. Bulkley: All right, sir. That is all.

Q This last letter that has been referred to as Defendants' Exhibit No. 15, dated April 22, 1909, reads in part, a letter written apparently to John L. Milton, care of the Webster Manufacturing Company, from New York City, and signed by you; 'I have apparently succeeded very well here; I have got a man who is interested who owns the control of the Maxwell-Briscoe Company.' What business was the Maxwell-Briscoe engaged in?

A Manufacturing automobiles.

Q And a little later in this letter, 'Our arrangement is that I shall come back next week with a machine, and put it on the Maxwell-Briscoe car, if it is here in New York.' What type of machine was to have been put on that car?

A High tension.

Q Now, Mr. Webster, in 1908 and 1909, what was the business of the Webster Manufacturing Company, with which you were connected?

A Manufacturing machinery that went to grain elevators, conveying and elevating machinery. We had a foundry and a machine shop, sheet iron shop.

Q And you manufactured engines, I believe you said?

A Yes. Gas engines.

Q Now, what was the relationship between this conveyor business and the engine business and the magneto business, in so far as the volume of the other business compared with the volume of the magneto business, or the relative importance of the two, or the stage of development of the two lines of business.

A The magneto business was a business we were trying to develop, and was a losing proposition. It was our hope that it would come to something, that kept us at it. In volume it was nothing, compared with our other business.

Q You were asked some questions about this high tension magneto business with the Cadillac Company, which I be-

lieve you said you could illuminate, but were not given
515 the opportunity. Won't you describe briefly, and in a general way, what that high tension Cadillac business was that occupied your time and attention, as I believe you explained?

A Why, in the development of this magneto business it took two types; one was the low tension, which we had been working on for two or three years, and met great obstacles, continual changing, and development, that would naturally be in a business that was in the embryotic state; it had to be developed; and we had been just sticking to it and plugging along, and not making any money at all; and Mr. Milton, who was our electrician, the man we depended on very largely in this matter, developed what we thought was a very great idea, in a magneto for automobiles, and of course, if he was right, there was an enormous field. Mr. Milton bought a Cadillac car, build this magneto, and put it on, and it ran. I had an acquaintance, I might say almost a friendship, with Mr. Leland, the President of the Cadillac Company, and I think I showed him the car here in Chicago, and let him ride in it, but in any event we built a magneto; I took it down to the Cadillac people; they put it on a car, and as I remember now they had their demonstrator drive across the State of Michigan, to Holland, Michigan, where I had a little farm at the time, over the sand roads, and at the time I think I had one of my first jolts from Milton; I wanted him to go along with the demonstrator; he was the inventor; and he was not able to go,—he said he was sick. And I went with him. I went with the man, and we drove across there, and he came back, and reported very favorably to the Cadillac Company. Then we put it onto a car, and they put, I think, seven men into the car, and went out and tested it in every way.

The magneto had one very important advantage over anything at that time. The self starter was not known. But we were able to start that car from the seat, with our magneto.

And they went out and tested this car, and came back
516 and gave us the order. Their first order was—It was their first, initial order, but it really carried with it an order for about, well, the order I figured was about \$320,000 or \$360,000, for their year's requirements, on which there was a very handsome profit.

He gave us that order, as I remember, on Mr. Milton's birthday, which was the reason that it was firmly fixed in my mind; it was the same day as the Fall of the Bastille,—wasn't

that right? I think the 20th of July. That thing was fastened in my mind by that point. And of course we were greatly excited, and greatly pleased, that we had really done something in the magneto business. And we were to receive an order, we were to commence delivering at fifty magnetos a day; and I thought I was on Easy Street,—the thing had gone right.

Mr. Bulkley: I did not hear the last.

A I thought I was on 'Easy Street'. I thought the thing had gone right at least; so I started at once; I rented a place in Tiffin, Ohio, and bought machinery, and started in. Then I do not know why, I do not know today why, but Mr. Milton went at once to Europe, I understand with Mr. Teagle, in the interest of some foreign patents which he expected to exploit there, and which I thought I owned; and of course we had a very serious—it left me right up in the air, so to speak; but we had agreed to deliver fifty machines a day, and we started in, bought the machinery, ordered everything necessary; and then, when we made the first machines, why, we could not get the same result. In a manufacturing experience of about thirty or forty years, I never have seen its equal; we made this hand machine, and it worked, and we never could duplicate it, which was very extraordinary. I hired the best electrical experts that I could get into Chicago, brought them there, and Mr. Leland brought down to Tiffin this man who made such a great success in the Delco System, Mr. Kettering, who is considered now one of the great electrical engineers; and he tried to help us; but
517 the final result was we never could make a practical machine out of that magneto; and of course it was a very serious loss and blow to us; and that is one of the reasons why some of these things are hazy in my mind; I was simply tremendously interested in this high tension thing. And when I had got, as I considered, the low tension on the right track, why, I gave it no further thought; it was going right.

Mr. Williams: Q. Now, how did that sum of \$320,000 or \$360,000 per year from the Cadillac Company, which you had in prospect, compare with all of the business you ever had done or thought of doing in the low tension prior to that time?

A Oh, well, the low tension had not developed into anything. It was, as it were, in the experimental stage. The Harvester began ordering, I think, in thousand lots, and

their price was in the neighborhood of nine dollars or ten dollars a piece, as I remember it.

Q Now, you say that this magneto was moved to Tiffin, and a factory installed, and equipped, and so on. Was there any movement of the factory of the Webster Manufacturing Company, in so far as it was engaged in the manufacture of these other lines, that is, the conveying machinery and elevator machinery and gasoline engines, and so on?

A Well, about this time we built a malleable iron foundry in Tiffin, and then about two years afterwards we moved the whole plant there. I think the plant was moved there in 1911.

Q Did you continue actively in or at the head of the Webster Manufacturing Company from 1909 on?

A Until 1913 or 1914, I think it was we—

Q Until then?

A Until then, yes.

Q Was that business as successful, in so far at least as you personally were concerned, and your interests in it, following 1909, as it had been for the 30 or 35 years prior to that time?

A Oh, we lost a good deal of money in Chicago here, when we divided our plant, part of it being in Chicago, and part of it in Tiffin. We had some very hard years, and lost a good deal of money.

Q To what extent did those difficulties absorb your attention at that time?

A Entirely.

Q In what way?

A Well, I of course was right on the job all the while, and my mind was on that—

Q Well, were you distressed or worried, or satisfied, or—

A Oh, no, I was of course worried and perplexed all the while.

Q Now, from 1909 on, will you name some of the concerns with which you have been actively identified?

A Do you mean from 1909 on to when?

Q Down to the present time.

A Well, we first had the Tiffin Malleable Iron Company, of which I was President. Then that was absorbed by the Webster Manufacturing Company. Then I formed the Webster Electric Company, entirely separate from the Webster Manufacturing Company, somewhere in those dates, and the Webster Manufacturing Company of course owned a large

block of their stock. Then I think it was in 1913 or 1914 I sold out all my active interest in the Webster Company.

Q Which Webster Company?

A The Webster Manufacturing Company.

Q That is the elevator and gasoline and—

A Elevator and conveying.

Q And engine company?

A And I then—Do you want the balance of the history?

Q Yes, to show what has been occupying your attention during this period of years.

A Well, after I retired from the active business of the Webster Manufacturing Company I interested myself in the Pfanstiehl Company, a company that manufactures rare metals and tungsten, makes tungsten points; and I was very much interested in that, actively interested in that for two or three years, and last year, last December a year ago, I took a very active interest and bought into the Amalgamated Machinery Company, of Chicago, who were making tools for making big machines for making munitions, that is, we were making machines for making shells, and selling them to such concerns as the Westinghouse, the Detroit Shell, and Winslow Brothers; we furnished all those shops; and then in the early winter the Government was unable to get machines for making, or was unable to get gun boring machines. There was a very tremendous demand for guns, big guns.

Q How big?

A Oh, guns having a barrel of forty-five feet. And the result was that the Government was right up against it; it did not have any—absolutely could not get any planing capacity for planing these long gun boring machines. So we furnished the American Bridge Company, we furnished the Watertown Arsenal; we furnished the Erie Forge; and we furnished the Navy Department; and in order to do that we built four planers, 184 feet long, in the middle of the winter, and accomplished a very remarkable feat of engineering. In other words, we were enabled to deliver these machines in time to help the Government out. That has been my work during the last year.

Q You have been connected during this interval with the Webster Engineering Company, a separate corporation?

A Yes.

Q What, very briefly, was its business?

A That was a business that I started to establish for my

son, Towner; we continued that for a time. I might say
520 that at the same time I organized the American Steam
Conveyor Corporation, for handling ashes, and that sort
of work, on which we had a very nice business. I was President
of that for about a year or a year and a half.

Q And devoting yourself actively to its affairs?

A Yes.

Q Practically all of your business time?

A Yes.

Q Now, the Klix Manufacturing Company, have you been
connected with that?

A Yes.

Q In any way?

A But not in any active way.

Q Did you promote or organize that concern?

A Some of my friends got together—

Q Or were you interested in so doing?

A Yes. Invested a little money in it.

Q Now, are you now active at all in the management of
the Webster Electric Company, that is, in such a way as
would require you to devote all of your time or a certain
part of your time every week or every month?

A I am not.

Q To its affairs? How long since you have been thus
actively connected with the Webster Electric Company?

A Oh, I should say, I should guess three or four years.

Q And before that time, that is, before 1915, say, had you
or had you not devoted all or the bulk of your time to the
affairs of the Webster Electric Company for several years?

A I had not.

Q Have you ever devoted the bulk of your time to its
affairs?

A No, sir.

521 Q John L. Milton has been referred to as engineer
or chief engineer. Will you state whether or not he had
that title when he was connected with the Webster Com-
pany?

A I don't think he had that title.

Q What was his relationship with that concern? Was
it that of inventor, or of engineer, or of manufacturer or
what?

Mr. Bulkley: I object to that as leading.

A Oh, as inventor. He was with us as inventor. It was
a sort of family affair and we were trying to work it up.

Mr. Williams: Q You were asked during your cross examination as to some ignition system having a little coil on the spark plugs. Is that the same as this high tension machine in which the Cadillac Company became interested?

A No, that was something entirely different.

Q Did you have a salary from the Webster Manufacturing Company; do you now or have you had for a considerable period of years?

A No, I have had no salary.

Mr. Williams: That is all.

Recross Examination by Mr. Bulkley.

Q You referred to getting your first jolt from Mr. Milton?

A Yes, sir.

Q What do you mean by that?

A I think that is a proper English word.

Q What did you refer to as being a jolt, which you got from him; your first jolt, what was it?

A That is when I said he did not go across country with me, is that it?

Q And told you he was ill, you say?

A Yes, sir.

Q Is that what you mean?

522 A Yes, sir.

Q Explain what you mean by the jolt?

A I think he should have—as the inventor, he ought to have gone with that machine. I think he was entirely well enough to do so and I was greatly distressed that he did not do it.

Q Wasn't there some trouble about your being able to make deliveries under this contract with the Cadillac Company?

A Oh, yes. We could not make the deliveries.

Q Why not?

A We could not make any machines.

Q Did you have the plant in readiness so that you could make them?

A Yes, sir.

Q When was it proved that you could not make those machines successfully?

A Why, at that time.

Q And make them work?

A At that time.

Q At the time you showed it to the Cadillac Company?

A No.

Q One moment. Let me finish my question. At the time you showed it to the Cadillac Company and they gave you their order on some demonstration, was it proved then that it could not be made?

A Why, of course not.

Q Yes.

A But we had only made it by hand at that time.

Q Did you make a demonstration to anybody connected with the Cadillac Company of this high tension magneto?

A Yes, sir.

Q Before you got the contract?

523 A Yes, sir.

Q And that is the instance when you say you went out in the car and that you didn't believe Mr. Milton was sick, and he ought to have been there; is that the time you refer to?

A That is one of the times.

Q How soon after that was it that they gave the order?

A I should think it was within a very few days.

Q Yes. Who was there representing the Cadillac Company at the time of making that test?

A Oh, Mr. Leland and Mr. Sweet.

Q Were they satisfied that it was a successful thing?

A They were entirely satisfied, apparently; they gave the order.

Q When did you learn it was not a satisfactory thing after that?

A When we got our plant going and were trying to make it; I would say it was six weeks.

Q What was the matter with it?

A Why, you will have to find some one to tell me that.

Q You don't know?

A No.

Q Didn't you hear what was said about its unsatisfactoriness, the cause of it being unsatisfactory?

A No, I don't think anybody ever really knew what was the matter.

Q Didn't you ever hear what was the matter with it?

A It is like a man who is sick, a dozen doctors will say he has a stomach ache, or appendicitis, or whatever it may be.

Q Did you ever hear any of your engineers saying anything with reference to what it was that rendered it subsequently unsatisfactory?

* * * * *

524 A I have never found out to this day what was the matter; and I spent money and time and everything to find out.

Mr. Bulkley: Q Who told you at any time that it was unsatisfactory?

A Why, Mr. Sweet came down, the chief engineer, and Mr. Leland, president of the company, came down—

Q What company is that with which he was connected?

A The Cadillac Company. He was chief engineer of the Cadillac Company. Mr. Leland himself came down and we did everything humanly possible to make it go, of course.

Q Do you know that?

A Yes, I know it.

Q You were familiar enough with what was done and the trouble to know that you did everything that was possible to make—

A I didn't say that.

Q Wait until I ask the question.

The Witness: All right now; what is it?

Mr. Bulkley: Read the question.

(Question read as follows: 'You were familiar enough with what was done and the trouble to know that you did everything that was possible to make that'—)

Mr. Bulkley: —work?

A I can't answer the question in the way you put it.

Q Answer it in your own way.

A I told you I didn't know anything about it, but I tried to find out what the trouble was.

Q Answer it.

A I didn't know what was the trouble. I used every method possible to find out because there was—

Q What method did you use to find out?

A Mr. Leland loaned me all of his forces and I went and got Mr. Kempster Miller here, of Chicago, who was considered one of the best electricians in the United States, to
525 come down with his assistant, and we paid him big sums, and Mr. Leland brought down Kettering, of the Deleo people, down there, whom he considered the best electrician he could get hold of, and we used every method in our power, because they wanted the magnetos and we wanted to supply them with them.

Q And you never learned what the trouble with it was?

A No, I don't know today what the trouble was, and I don't think that anybody knows.

Q Didn't Mr. Milton strenuously oppose your going to Tiffin?

A I don't know whether he did or not.

Q You don't remember about that?

A It wouldn't make any difference whether he did or not.

Q I am not asking you to argue the question, sir.

A I don't know whether he did. But if he did it made no impression on my mind.

Q Didn't he tell you—to refresh your recollection—that you ought not to go to Tiffin, a little place like that, to manufacture these instruments?

A I don't think so. I don't remember it at all.

Q Wasn't there a little strained relation arose between you and Mr. Milton because of your insistence upon going down there?

A None that I remember of.

Q Don't you remember that you didn't want to do many of the things which he asked you to do?

A I don't remember that.

Mr. Bulkley: That is all.

Mr. Williams: We offer in evidence the patents in suit as alleged in the bill, and ask that they be marked as Plaintiff's Exhibit No. 20. Those copies, I believe your Honor has in a folder.

The Court: You mean also the one in the supplemental bill?

526 Mr. Williams: Yes, the Kane patent and the nine Podlesak patents.

(Said documents were then received in evidence, marked Plaintiff's Exhibit No. 20.)

HENRY J. PODLESACK, called as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 50 years, residence Chicago, Illinois; consulting engineer. Has had business relations with the Webster Electric Company and its predecessors, the first of which was when Mr. Webster obtained an option for a license under an application which the witness and his brother had jointly pending in the Patent Office. The witness was then asked the following question:

“What were the circumstances leading to the taking of that option?”

This question was objected to by defendants' counsel upon the ground that the contracts in evidence and in issue in this case were free from ambiguity, and that the circumstances leading up to them were therefore irrelevant and immaterial; and that if the purpose of the question was to introduce evidence of such circumstances for any other purpose it was immaterial. After hearing argument of counsel the objection was sustained, with exceptions to plaintiff, and the witness withdrawn from the stand.

H. R. VANDEVENTER, called as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 41, residence, Newark, New Jersey; occupation, 527 engineer; connected with the Splittdorf Electrical Company of Newark as engineer. Formerly connected with the defendant, Sumter Electrical Company of Sumter, South Carolina, up to the time of its dissolution, the exact date of which the witness did not remember. Had been connected with the Sumter Company and its predecessors since 1905. Witness did general engineering work for the Sumter Company and its predecessors and for a time was treasurer and general manager of the Sumter Electrical Company. Also had something to do with its patents and was familiar with what the Sumter Electrical Company got out in the way of sales and advertising literature up to the time when the sales end of the business was taken over in Chicago in 1913 or 1914 by the Sumter Electrical Company of Chicago, which was a separate corporation and with which the witness had no direct connection. Mr. F. C. Manning was the president of the Chicago Company. He had been previously connected with the Sumter Electrical Company of South Carolina as vice-president, and prior to that with its predecessor in business, the Sumter Telephone Manufacturing Company, also as vice-president. Witness frequently came to Chicago to talk about the magnetos for which Mr. Manning's company was giving the Sumter Electrical Company orders, and at such times had the usual conversation that business people

have about such things. The South Carolina Company joined the Chicago Company to some extent in getting out advertising literature. With reference to Mr. Manning's coming to Chicago, witness testified as follows:

"Q Did you have any talk with Mr. Manning about his coming here before he came?

A Yes.

Q Did you discuss with him the advisability of doing so, of his doing so?

A Why, we talked of South Carolina as quite a long ways off from the market in which to carry a stock of goods, and that that stock should be carried in Chicago, and there 528 was some general talk as to how that should be done and the best ways of doing it; and, finally, I think he decided to come out here and start a sales company; but I don't know—I don't recollect very much about the circumstances that led up to the establishment of a sales company here."

The attention of the witness being called to the booklet subsequently introduced in evidence as Plaintiff's Exhibit No. 21, witness identified it as a catalogue of Sumter magnetos issued in 1915, but was unable to say whether issued by the Sumter Company of South Carolina or the Sumter Company of Chicago. Stated that it appeared to be the first print and was very likely gotten out by the Sumter Company of South Carolina. Witness had read the booklet. Believes he prepared the copy for it.

The attention of the witness being called to another pamphlet subsequently introduced in evidence as Plaintiff's 529 Exhibit No. 22, bearing the name Sumter Electrical Company on its title-page, and asked as to which of the two Sumter Companies this name referred to, said:

"Why, I think this represents—this was published by the Chicago corporation or in their behalf, because after the establishment of the Chicago—the Illinois—corporation, we did no selling, or very little selling, from Sumter. I think these booklets were printed by us from them and sent out."

Witness being shown another pamphlet subsequently introduced in evidence as Plaintiff's Exhibit No. 22, identified it as a booklet put out by the Sumter Telephone Manufacturing Company of Sumter, South Carolina, predecessor in business of Sumter Electrical Company, defendant, and stated that he probably prepared the copy for the booklet, and approved its issue. Thought the booklet was issued in 1911 or 1912, but stated that there were several reprints of it from

time to time and therefore could not state positively when the particular copy submitted to him was printed. It might have been at any time from 1911 until the name of the company was changed in 1913.

At this point counsel entered into a stipulation that certain advertising literature produced by plaintiff's counsel was published and distributed by the defendant, Sumter Electrical Company, and that the paper forming part of this advertising literature bearing the printed mark 'Form 17' was published and distributed in the year 1910. This paper was introduced in evidence as Plaintiff's Exhibit No. 23. The stipulation then continued as follows:

"Mr. Williams: That the one marked 'Sumter Magnetos for Stationary and Marine Engines, Catalogue No. 14' was published and distributed in the year 1914; and I ask that that be marked Plaintiff's Exhibit No. 24. Let me withdraw that one, and my offer of it, for a moment, and in lieu of that

530 substitute this: That the booklet entitled 'Ignition Hand Book, Copyright 1911', was published and distributed in 1911; and I ask that that be marked Plaintiff's Exhibit No. 24.

(The said document was thereupon marked as Plaintiff's Exhibit No. 24.)

Mr. Williams: That the booklet entitled 'The Magneto Hand Book. Facts About Magnetos for Stationary Engines', was thus published and distributed, there being, however, no stipulation as to the date of publication or distribution. That we ask to have marked as Plaintiff's Exhibit No. 25.

(The said document was thereupon marked as Plaintiff's Exhibit 25.)

Mr. Williams: That the booklet entitled 'The Magneto Hand Book, Copyright 1913', was thus published and distributed in 1913; and we ask that that be marked Plaintiff's Exhibit No. 26.

(The said document was thereupon marked as Plaintiff's Exhibit 26.)

Mr. Williams: That the booklet entitled 'Sumter Magnetos, Catalogue No. 14', was thus published and distributed in 1914; and we ask that that be marked Plaintiff's Exhibit No. 27.

(The said document was thereupon marked as Plaintiff's Exhibit 27.)

Mr. Williams: That the booklet entitled "High and Low Tension Sumter Magnetos, Form 51", was thus published and

distributed in February, 1914; and we ask that that be marked as Plaintiff's Exhibit No. 28.

(The said document was thereupon marked as Plaintiff's Exhibit 28.)

531 Mr. Williams: That the booklet entitled 'Form 57, Second Reprint', was thus published and distributed in December, 1914; and we ask that that be marked Plaintiff's Exhibit No. 29.

(The said document was thereupon marked as Plaintiff's Exhibit 29.)

Mr. Williams: That the booklet with the printed date, January, 1915, was thus published and distributed in January, 1915; and we ask that that be marked as Plaintiff's Exhibit No. 30.

(The said document was thereupon marked as Plaintiff's Exhibit 30.)

Mr. Williams: That the booklet entitled 'Sumter Plug Oscillator', was thus published and distributed in the early part of 1915; and we ask that that be marked as Plaintiff's Exhibit No. 31.

(The said document was thereupon marked as Plaintiff's Exhibit 31.)

Mr. Williams: That the folder entitled 'Form 56' was thus published and distributed in July, 1914; and we ask that that be marked Plaintiff's Exhibit No. 32.

(The said document was thereupon marked as Plaintiff's Exhibit 32.)

Mr. Williams: That the booklet having the printed mark 'No. 76-A' was thus published and distributed in 1918; and we ask that that be marked as Plaintiff's Exhibit No. 33.

(The said document was thereupon marked as Plaintiff's Exhibit 33.)

Mr. Williams: That page 69 of the magazine 'Gas Power' for February, 1915, was inserted and published at the instance of the Sumter Electrical Company, in February, 1915; and we ask that that be marked as Plaintiff's Exhibit No. 34.

532 (The said document was thereupon marked as Plaintiff's Exhibit 34.)

Mr. Williams: That page 69 of the magazine 'Gas Review' was an advertisement published at the instance of Sumter Electrical Company in February, 1915; and we ask that that be marked as Plaintiff's Exhibit No. 35.

(The said document was thereupon marked as Plaintiff's Exhibit 35.)

Mr. Williams: That page 30, or the article relative to 'Sumter Magnetos,' on page 30 of the magazine 'Farm Power' was published in June, 1915, at the instance of the Sumter Electrical Company; and we ask that that be marked as Plaintiff's Exhibit No. 36.

(The said document was thereupon marked as Plaintiff's Exhibit 36.)

Mr. Williams: That the pamphlet entitled 'Mechanical Construction of Ignition Magnetos, by H. R. Van Deventer' was published in June, 1918, by the Society of Automotive Engineers, and that the article appearing therein was prepared by H. R. Van Deventer, with his consent and authority for the benefit of the Sumter Electrical Company; and we ask that it be marked Plaintiff's Exhibit No. 37.

(The said document was thereupon marked Plaintiff's Exhibit 37.)

Mr. Williams: That the paper entitled 'N. G. E. A. Bulletin' was published in October, 1915, and that the article appearing therein, entitled 'The Magneto of the Future' was prepared by F. D. Williams, one of the salesmen of the defendant, Sumter Electrical Company, and that the article was published under his authority and with his consent.
533 We ask that it be marked Plaintiff's Exhibit No. 38.

(The said document was thereupon marked Plaintiff's Exhibit 38.)

Mr. Williams: That the bulletin marked 'Bulletin H, 188 F,' was published and distributed in 1918, by Fairbanks, Morse & Company, and that the ignition equipment described and referred to therein was ignition equipment furnished by the defendant, Splitdorf Electrical Company, one of the defendants herein, and we ask that it be marked Plaintiff's Exhibit 39.

(The said document was thereupon marked as Plaintiff's Exhibit 39.)

Mr. Williams: That the booklet marked '1915, Sumter Magnetos, Catalogue No. 15,' was published and distributed by Sumter Electrical Company, the defendant herein, early in 1915, and we ask that it be marked Plaintiff's Exhibit No. 40.

(The said document was thereupon marked as Plaintiff's Exhibit 40.)

Mr. Williams: That the booklet marked '1915, Sumter Magnetos, Catalogue No. 15,' First Re-print', was published and distributed in the fall of 1915 by Sumter Electrical Com-

pany, the defendant herein; and we ask that it be marked Plaintiff's Exhibit No. 41.

(The said document was thereupon marked as Plaintiff's Exhibit 41.)

Thereupon the witness H. R. Van Deventer resumed the stand and his direct examination was continued by Mr. Williams, as follows:

"Q Now, Mr. Van Deventer, as to this booklet, Plaintiff's Exhibit No. 27, will you state whether or not that was printed at the instance of the Sumter Electrical Company of South Carolina? (Exhibit 27 shown to the witness.)

534 A Yes; there is a mistake on page 15 of that bulletin; and it was never circulated, and that edition was supposed to have been destroyed, and was in fact destroyed, so far as we were able to destroy it. That is why we objected to putting it in.

Q That is, the mistake was on this page reading as follows:

'Oscillating magnetos.'—containing three cuts, and reading as follows:

'We furnish a full line of oscillators adapted to every size of engine, and of the same proven construction as our rotary types. Note that all armature cores are laminated, and shafts are fitted into the head, thus eliminating electrical disadvantages of the cheaper construction, where the shaft passes through the laminations. On engines adapted for oscillators the Sumter line is ideal for easy starting and running. The springs are made from the best vanadium steel, which costs from three to four times as much as the ordinary spring wire commonly furnished. Spring rollers are hardened.

'Sumter oscillators are offered to those who desire the very best of this type obtainable, and are superior in construction and performance to any oscillator now offered, and particularly to that class of oscillators with which the market is now flooded in an attempt to cater to the demand for a cheap magneto for small engines.

'Sumter oscillators comprise the magneto only as shown on pages 16 and 17, or, on quantity orders can be furnished complete with igniter, as shown by cuts on this page. Igniters may have N. G. E. A. standard electrode, drop forged parts, and comprise the complete ignition outfit for the engine, ready to mount.'

Is that the matter in which the mistake occurred, as you say?

A No. The mistake is in the cuts. Through some
535 error there was a cut made of an apparatus which we
never manufactured; in fact I think there was only one
of them made, and I doubt if that was operated.

Q Which cut?

A All three of the cuts shown on that page.

Q Are those cuts, all of them, of the same identical machine, or of different machines?

A That is the same machine.

Q Three cuts of the same machine?

A Yes, sir.

Q Who did manufacture that machine?

A Nobody.

Q Now, wherein lay the mistake in this matter?

A Why, when the cuts were made for the page, that page of advertising matter, the wrong machine was probably photographed, or some mistake of that kind was made. That was an experimental model, and was never manufactured, and never sold.

Q Now, will you say that none of these booklets like Plaintiff's Exhibit No. 27 were distributed?

A Not knowingly. If they were, it was through inadvertence and mistake in sending them out. We used a good many of them, and tore the pages out of them.

Q Can you say whether this identical Plaintiff's Exhibit 27 was furnished by the Sumter Company or its agents to Ira H. Waite, the agent or representative of the International Harvester Company at Kansas City?

A I could not say.

Q Were any copies identical with this Plaintiff's Exhibit No. 27 thus furnished to him?

A I could not say that, Mr. Williams.

Q Can you testify that they were not thus furnished to him in 1914?

536 A No, I could not. The advertising department might have sent out a hundred of those things inadvertently. I could not say that none of those were ever distributed to anybody.

Q Who was it stopped the further distribution of them?

A I did.

Q You did that yourself?

A Yes, sir.

Q You looked over these exhibits which I have just been offering, with me, during the noon recess, did you not?

A Yes, sir.

Q You identify this Plaintiff's Exhibit No. 24, do you not, as matter gotten out by the Sumter Company after having prepared by you in 1911?

(Plaintiff's Exhibit 24 shown to witness.)

A Yes, sir.

Q And you identify this Plaintiff's Exhibit No. 26, booklet, as having thus been gotten out in 1913, do you not?

(Plaintiff's Exhibit 26 shown to witness.)

A Yes, sir.

Q Now, this other booklet, marked Plaintiff's Exhibit No. 25, as I understand you, you are unable to say when that was published and distributed?

A Yes, sir.

Q Can you say whether that was published and distributed at a date intervening between the dates at which this 1911 book, Plaintiff's Exhibit No. 24, and the 1913 book, Plaintiff's Exhibit No. 26, were published and distributed?

A No, sir, I could not say.

Q Now, in connection with that matter of the dates of publication of these booklets, let me call your attention to pages 46 to 53, and ask you whether you find upon those pages a several pages description, and a considerable number of 537 cuts illustrative of an oscillating type of magneto at that time manufactured and offered for sale by the Sumter Company, this booklet to which I am referring you being Plaintiff's Exhibit No. 24.

(Plaintiff's Exhibit 24 shown to witness.)

A Yes, sir, that is a description of one type of machine that was manufactured at that time.

Q How many pages are there in that booklet devoted to the exploitation of that machine?

A Seven.

Q Now, in this booklet marked Plaintiff's Exhibit No. 25, do you find on page 43 the following:

'Oscillating magnetos. We furnish a full line of this type formerly so popular, but wish to state that owing to the high efficiency of our standard rotary types, and the fact that we can meet every requirement with the rotary machine, the oscillators are no longer necessary, nor are they desirable, owing to certain inherent disadvantages not possessed by rotary machines. Figure 18 shows front and side views of our single spring oscillator, type B. V., a very popular machine

possessing all of the Sumter features, and including a special bearing arrangement, special lubricators, etc. We can accomplish starting from a standstill, with the rotary magneto, and fulfill any other conditions for which an oscillator has heretofore been considered necessary. While we furnish a machine of the oscillating type equal if not superior to anything on the market, we suggest that manufacturers correspond with us with a view to adopting the more simple and efficient rotary type.'

Mr. Bulkley: That is objected to, as immaterial and irrelevant.

The Court: It may be received, subject to the objection.

538 Mr. Williams: Q The question is whether you find that matter there.

A I do.

Q Now, do you find anything else in this booklet, Plaintiff's Exhibit No. 25, aside from the cut which accompanies the reading matter which I have read, and referring to oscillating magnetos?

Mr. Bulkley: The same objection.

The Court: You may answer.

A No, I do not. At that time I believe we got out—

Mr. Williams: Q Well, you have answered the question. Now, do you find, in this Plaintiff's Exhibit No. 26, which was gotten out in 1913, the following on page 35, relative to oscillating magnetos, and so entitled:

'We furnish a full line of this type formerly so popular, but wish to state that owing to the high efficiency of our standard rotary types, and the fact that we can meet every requirement with a rotary machine, oscillators are no longer so desirable, as they have certain inherent disadvantages not possessed by rotary machines.

'We will be pleased to correspond with manufacturers now using oscillators, who desire to change to the more simple and efficient rotary type;'

And further: 'We can accomplish starting from a standstill with the rotary magneto, and fulfill any other conditions for which an oscillator has heretofore been considered necessary. We do not recommend oscillators, and while we furnish a machine of this type equal, if not superior to anything on the market, we do not recommend same?'

Mr. Bulkley: The same objection.

The Court: He may answer.

Mr. Williams: Q Do you find that matter on this page, as I have indicated?

539 (Plaintiff's Exhibit 26 shown witness.)

A I do.

Q Now, do you find, in this last booklet, Plaintiff's Exhibit No. 26, of 1913, any other matter relative to the oscillating magnetos, or any cuts of oscillating magnetos, of any kind?

A I do not.

Q Now, having called those pages to your attention, and to the fact that the 1911 booklet devotes some several pages to the exploitation of oscillating magnetos, and the fact that the 1913 booklet devotes absolutely nothing more to the subject of oscillating magnetos than that which I have read to you from page 35, and in which it is stated that you do not recommend oscillating machines, are you enabled now to state, in view of the fact that this Plaintiff's Exhibit No. 25, which has an intermediate amount of matter relative to oscillating machines, and which is neither so strong in its commendation and exploitation of oscillating machines as is the 1911 book, but which, on the other hand, does not condemn oscillating machines to the extent that the 1913 book condemns them,—can you state whether or not this Plaintiff's Exhibit No. 25 was not published and distributed at a date intervening between the dates of the 1911 book and the 1913 book.

Mr. Peaks: I object to the question.

The Court: I think he may answer that. It is a question of a date, merely whether his recollection is refreshed, so that he can testify to a date. Are you able to do that?

A No, sir.

Mr. Williams: Q Is it not a fact that the Sumter Company's exploitation of oscillating machines diminished between say 1911 and 1913?

A No, I think it increased. The reason why this variation in the statements in these booklets is concerned, is this: The booklets were put out for general distribution—

Q Well, I think you have answered my question, Mr. 540 Van Deventer. You say that the exploitation of oscillating machines during 1911 and 1913, from 1911 to 1913, by the Sumter Company increased?

A I believe so.

Q Now, did you prepare the copy for this which I will quote from page 6 of the February, 1914 booklet, Plaintiff's Exhibit No. 28:

'Oscillating and self-starting magnetos.

'We formerly furnished a full line of oscillating magnetos, but wish to state that owing to the high efficiency of our standard rotary types, and the fact that we can meet every requirement with the rotary machine, oscillators are no longer necessary, nor desirable, owing to certain inherent disadvantages.

'Among these disadvantages may be mentioned the use of spiral springs. As every mechanic knows, it is impossible to operate a spring of this type continuously without breakage. Other defects are high voltage, the difficulty in keeping the timing in proper adjustment, and in taking care of the advance and retard. The necessary drive is complicated, and expensive.

'As to the self starting feature, some time ago we developed a self-starting magneto, wherein the trip-lever was locked back against the tension of the springs, and then fired by releasing same. We patented this feature, and some of the machines now offered, for which claims of novelty are being made, we consider infringements of this patent. We did not offer a machine of this type to our customers, because we consider it inherently defective, and although we manufactured same, and it proved more satisfactory than any similar machine on the market, we could foresee where it would not give the same uninterrupted service as the standard rotary types for the rotary engine.'

Was the copy for that matter prepared by you for this pamphlet of February, 1914?

(Plaintiff's Exhibit No. 28 shown witness.)

541 Mr. Bulkley: The same objection.

The Court: The same ruling.

A Yes.

Mr. Williams: Q Now, does that, the publication of that matter in this pamphlet of 1914, refresh your recollection as to the fact of whether the Sumter Company lessened and practically abandoned its efforts to sell oscillating types of magnetos between 1911 and say February, 1914?

A If you will permit me to answer the question in my own way, I can answer it intelligently.

Q Well, I am asking you whether this matter which I have just read refreshes your recollection upon that point.

A We did not abandon the manufacture of oscillating magnetos. I think we made more, as time went on. But we did not wish to advertise them generally to the trade, because we found that very few people at that time were ready to use an oscillating equipment.

Q And so in your advertising matter you condemned that; is that the fact?

A We did not exactly condemn them. We recommended what in our own opinion as engineers we thought would be the best.

A And this is typical of the advertising matter which you got out during these several years, is it?

A These exhibits?

Q Yes.

A Yes, sir.

Q To whom did you sell those oscillating equipments, in 1913?

A I think we sold them to the Otto Gas Engine Company.

Q Anyone else?

A I do not recollect. I did not have charge of the sales. Mr. Williams: That is all.

542

Cross-Examination by Mr. Bulkley.

Q Mr. Van Deventer, when the Sumter Company started business, what did they then make and sell?

A Telephone apparatus.

Q How long did they continue making telephone apparatus?

A Well,—

Q And was it telephone apparatus exclusively which they made and sold, at the outset of their career?

A Well, in 1905, when I came with them, it was exclusively telephone apparatus. They made some special equipment for the United States Government, and later on they made gun-firing magnetos.

Q What was the reason for the Sumter Company taking on the manufacture of magnetos, and about when was it that they started manufacturing magnetos?

A In about 1907 the Western Electric Company went on the market, with their telephone apparatus, and it seriously affected the business of the Sumter Company, and they started to look around for some other line of manufacture, and they took up and considered several matters, and as they had made a great many magnetos, they thought that would be a good business to go into, and they started to go into it.

Q Now, you said, upon your cross-examination, with reference to this lessening or increasing of the sales of magnetos of particular types, that you had some explanation to make. Will you go on and make that explanation?

A Well, in regard to the business from 1910 until 1914 or 1915, we were pretty far away from the gas engine factories. We had to get a line on what they wanted; and we found out that the oscillating magneto business required practically a special type for every manufacturer,—what we were then making,—and we did not advertise that kind of magneto extensively, because we did not want to stir up any more of that kind of business at that time than we 543 were able to handle; we preferred to sell the machines that we were tooled up and had ready for manufacture, and which for the majority of purposes and on the majority of engines we considered superior to the other type.

Mr. Bulkley: That is all.

Redirect Examination by Mr. Williams.

Witness was shown Plaintiff's Exhibit Defendants' machine Type B, and asked whether machines identical or substantially identical with the exhibit were made prior to August 3, 1915, to which witness replied that "There were machines made prior to that date of that general type, but that is not one of them."

Witness was then shown the two booklets Plaintiff's Exhibits Nos. 40 and 41, and asked if he could say whether the apparatus shown in the cut in Exhibit 41 was manufactured and sold prior to August 3, 1915, to which witness replied:

"I cannot say as to the month and date. I can give you that exactly, if you will let me consult my records. It was some time in 1915, but I do not recollect the date."

Witness was then given permission to consult his memorandum, and stated that devices such as those inquired about were manufactured and sold or offered for sale prior to August 3, 1915. Witness was then asked wherein the equipment exemplified in Plaintiff's Exhibit Defendants' machine Type B differed from that illustrated on pages 37 to 43 of Plaintiff's Exhibit No. 41, and replied:

"Well, there are a great many differences."

Witness then offered to produce one of the machines illustrated in the booklet Exhibit No. 41, and it was agreed that this should be done.

Plaintiff's counsel thereupon offered in evidence as Plaintiff's Exhibit No. 42 certified copies of certain of the pleadings and proceedings in the matter of Emil Podlesak, 544 Henry J. Podlesak and Webster Electric Company, plaintiffs, vs. Sumter Electrical Company, defendant, in a

suit in the United States District Court for the Eastern District of South Carolina, under reissued Letters Patent No. 13,878. Objected to by counsel for defendant. Objection overruled.

EMIL PODLESAC, called as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 43; occupation, manufacturer. One of the defendants. Present throughout the trial and heard the testimony relative to Plaintiff's Exhibit No. 12 machine. Went to work for Webster Electric Company or its predecessor August 10, 1909, and moved to Tiffin, Ohio shortly afterward. Continued in the employ of the Webster Company for some time after that and was familiar with what it was manufacturing. At the time he began to work for the company it was manufacturing a machine which "outside of some mechanical, perhaps some details in there," was the same as Plaintiff's Exhibit No. 12. Continued to make such machines until about the middle of 1912. The Webster Company made the generators of the machines like Plaintiff's Exhibit No. 12 and supplied such generators to the International Harvester Company, and witness knew that such generators were to be mounted upon a plug and bracket and support such as that in Plaintiff's No. 12, and frequently saw such generators after they had been combined with the remaining parts of Plaintiff's Exhibit 12 by the International Harvester Company and put into use.

Plaintiff's counsel submitted to the witness a piece of apparatus subsequently offered in evidence as Plaintiff's Exhibit No. 43, and witness identified it as "an outfit for apparently a three-horse power International Harvester 545 vertical engine" manufactured by Webster Electrical Company, with which manufacture witness was connected. Being asked whether he was responsible for the substitution of Plaintiff's Exhibit No. 43 machine for Plaintiff's Exhibit No. 12 machine, in so far as the product of the Webster Company was concerned, witness said:

"Well, I developed the apparatus," and further stated that it was a part of his work while he remained with the Webster Company, under various contracts until 1915.

Asked if he could state approximately the number of these low tension ignition equipments manufactured and sold by the Webster Company during 1909 and subsequent years, witness stated that he did not know as to 1909; that in 1910 they made quite a good many, but witness could not say how many; that to the best of his recollection in 1910 and 1911 and part of 1912 "there may have been as many as 10,000, eight to ten thousand," altogether. Asked as to how many of these low tension equipments were sold in 1912 altogether, witness said he could not remember and could only make a guess at it. Asked if he knew what royalties he and his brother received during any of the years prior to that, or what in a general way they amounted to, witness stated he could not tell. Further examination along the same line objected to upon the ground that the plaintiff could secure accurate information from its own books, whereupon examination was discontinued.

No cross-examination.

Cross-Examination by Mr. Thompson.

Counsel for Emil and Henry Podlesak.

"Q At the time you entered the employ of the predecessor corporation, did you have a contract with them?

A I made a contract on August 10, 1909, yes, sir.

Q Was that contract in writing?

A Yes, sir.

546 Q I will ask you to produce that contract, if you have it here."

Here ensued a discussion between counsel and the Court regarding the introduction at this point of the Podlesak contracts identified as Exhibits 1, 2 and 3, including the following:

Mr. Thompson: "Then it will be admitted that Mr. Podlesak's employment, commencing August 10, 1909, down to May 14, 1915, was under exhibits—

The Court: 1, 2 and 3.

Mr. Thompson: 1, 2 and 3, of the answer of the defendant Tesla Emil Podlesak, in this case, will it?

Mr. Williams: May 4th is the date, is it not, instead of May 14th?

Mr. Thompson: May 14th.

The Witness: The 14th.

Mr. Thompson: May 14th?

A Yes, sir.

Mr. Williams: Is there any point in the difference between May 4th and 14th? I am quite sure the date is May 4th. Are you making a point of the fact that it was May 14th?

Mr. Thompson: I make a point that his employment actually terminated on May 14th.

Mr. Williams: What is the fact?

The Court: Q Do you know?

A I beg pardon.

Q When did you quit?

A I did not quit. I was discharged on May 14th.

Q Well, when did you stop going there?

A May 14th.

Mr. Williams: The point is, he resigned on May 4th, and the resignation, I believe, was accepted. That is why I am uncertain about it.

The Court: Q What do you say? Your date is the 14th, is it?

A Yes, sir.

Mr. Thompson: Q You went to work on what date, Mr. Podlesak?

A I signed this contract, I signed the first contract, on August 10, 1909. I went back to New Jersey, and packed my things, and actually started work on August 30, 1909.

Q And how long did you work under this first contract of August 10, 1909, for the predecessor of the present plaintiff?

A Until about April 1, 1910.

Q And then what happened?

A Then there was a new contract discussed, and that new contract was reduced to writing on May 18, 1910.

Q And on and after May 18, 1910, what did you do?

A I worked under that contract until a new contract was executed in March of 1913; I do not remember the exact date.

The Court: March 3rd.

Mr. Thompson: March 3rd.

Q And I will ask you, Mr. Podlesak, whether after May 18th, 1910, you worked at all under this old contract of August 10, 1909.

A No, sir.

Q And after March 3, 1913, did you work at all under either the contract of August 10, 1909, or the contract of May 18, 1910?

A No, sir.

Q And you state that you continued in the employ of the Webster Electric Company up to May 14, 1915?

A Yes, sir.

Q That is correct?

A Yes.

Q And after May 14, 1915, were you in the employ of the Webster Electric Company in any capacity whatever?

548 A No, sir.

Mr. Thompson: That is all.

Redirect Examination by Mr. Williams.

Q When did you become an officer of the Webster Electric Company? In March, 1912?

Objected to, objection overruled.

A I think it was in March; it was in 1912, I think it was in March, 1912.

Mr. Williams: Did you become a director at the same time?

Same objection and same ruling.

A Well, I had a letter from Mr. Loeb, telling me that I was elected secretary, and I presume that made me a director.

Mr. Williams: Q Well, you were a director for several years before 1915, weren't you?

A Some years, yes, sir.

Recross Examination by Mr. Peaks.

Q Mr. Podlesak, when did you cease to have any connection with the Webster Electric Company whatsoever?

A Well,—

The Court: Q When you sold out the patents?

Mr. Peaks: Well, I do not know. We were content to let it rest, when he says he was discharged, but Mr. Williams has been showing that he held some offices, in addition to his employment.

The Court: Of course these contracts were still in force, and he was collecting royalty.

Mr. Peaks: Q Well, were you an officer or director or employee of the Webster Electric Company, at the time you made your first contract with either the Splitdorf or the Sumter Company? You can answer that question yes

549 or no.

A When I made the contract with the Splitdorf Company?

Q Yes.

A No, sir, I was not.

Q Or with the Sumter Company?

A Or with the Sumter Company.

Q Either one?

A I was not connected with the Webster Company in any way, when I made those contracts.

Q How long had you been free from any service with them as an officer or a director or an employee, at that time?

Mr. Williams: Will you read that question, please?

(Pending question read.)

Mr. Peaks: Approximately?

A There was a stockholders meeting shortly after I was discharged, and the only thing that was said was that some other fellows were elected to the directorate, and that was all the notice I got, and I thought that was enough.

Q Well, how long after you quit was that, if you know?

A Oh, it was right shortly after that. I do not—

Q Well, you had not been an officer or director of the Webster Electric Company, then, for some months, at the time you made your first contract with either of the defendant companies; is that right?

A That is right.

Q That is all.

A I had not been for some little time. Yes, sir.

Redirect Examination by Mr. Williams.

Q You were secretary, and a director of the Company, the Webster Electric Company, on February 5th, 1914, were you not?

550 Objected to, and objection sustained, subject to the right of plaintiff's counsel to go into the matter later if shown to be proper.

Mr. Williams: Q Now, a matter, Mr. Podlesak, which I should have asked you about earlier: You are familiar with the subject matter of E. Podlesak patent No. 1,101,956, are you not, and are the inventor of the subject-matter of that patent?

A Yes, sir.

Q Now, was that invention also developed during the course of your—was that invention made by you during the course of your employment and connection with the Webster Electric Company?

Question objected to on the ground that the matter inquired about had been previously covered. Objection sustained.

Mr. Williams: Your Honor understands, of course, that that subject-matter of that patent 1,101,956 was not in this first machine which the witness identified.

Mr. Gifford: It was a subsequent development.

The Court: Yes, I understand that. I can see it right here.

CHARLES KRATSCH, called as a witness on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Residence, Chicago; occupation, manager of the Sumter division of the Splitdorf Company, Chicago. The Sumter division is the sales organization of the Splitdorf Company, defendant. Witness stated that he had been manager of it since July 1, 1918. Prior to that time he had been employed by the Sumter Electrical Company, the Illinois corporation, since October 1, 1915. Before that by the Sumter Electrical Company of South Carolina. The employment of the witness, in these various connections, had always been in 551 Chicago and always in the same office.

The witness further testified:

"Q Now, what was the business of this Sumter Electrical Company of Illinois?

A Principally a sales organization.

Q For whom?

A For ourselves. We bought products from the Sumter factory of the Splitdorf Company.

Q Did you buy it always from the Splitdorf Company?

A Yes, sir.

Q Did you buy everything that you sold from the Splitdorf Company?

A Yes, sir.

Q Never manufactured anything yourselves?

A Oh, yes, we manufactured some small articles here.

Q What?

A Electrodes and small igniters.

Q What do you mean by electrodes? Electrodes for what?

A The electrode is part of the igniter. It will be perhaps a movable electrode or stationary electrode.

Q I call your attention to this booklet, Plaintiff's Exhibit 21, and ask you whether you are familiar with the apparatus shown and described on pages 37 to 44, inclusive, of that booklet?

A Yes, I know the machine.

Q Wherein does the machine shown on those pages of that booklet differ, if at all, from this Plaintiff's Exhibit Defendants' machine, Type B?

A There is a difference in the length of the plug.

Q What else?

A There may be some other differences. There is a difference in the number of parts, perhaps. I am not at all familiar with that end of it. You have a sample of the other one right over there.

552

Mr. Williams: Q This piece of apparatus which I hand you, is that the thing illustrated on these pages 37 to 44 inclusive of this Plaintiff's Exhibit 41 Booklet?

A Yes, sir.

Mr. Williams: Q You sold equipment, did you, like this which you have just identified?

A Our office sold it, yes, sir.

Mr. Williams: I ask that the apparatus just identified by the witness be marked Plaintiff's Exhibit 44, and as such we offer it in evidence. No, I will ask you to have that marked Plaintiff's Exhibit, Defendants' Machine Type A.

(Said machine was then received in evidence and marked Plaintiff's Exhibit Defendants' Machine Type A.)

Q Now, in selling this equipment Plaintiff's Exhibit Defendants' Machine Type A, it was equipped, was it, with a magneto generator proper, as shown on pages 37 to 44 on this Plaintiff's Exhibit 41, Booklet?

A Yes, sir.

Q You had to do with making those sales yourself, did you not?

A No.

Q You didn't make those sales?

A No.

Q Now, when this equipment Defendants' Machine Type A was installed on an engine, there was a dowel pin, as I understand it, which projected from the engine cylinder cast-

ing and extended into this hole in the arm, which extends laterally from the plug, is that correct?

A Yes, I saw some such.

Q Such equipments were sold to Fairbanks Morse Company with the expectation that they would use that dowel pin extending into this hole in the arm in the manner which

I have described, were they not?

553 A Yes, sir.

Q And thus used by the Fairbanks Company to your knowledge?

A Yes.

Q Now, to hold this equipment to the engine cylinder what was employed? A bolt or clamp, or both or how?

A To the best of my knowledge there was some kind of clamp employed there.

Q Where did that clamp engage or strike? What was the construction?

A I don't know; I am not familiar with it.

Q Did you say you were or you were not familiar with it?

A No, sir, I never understood that apparatus. At the time those were sold I was office manager and had nothing to do with sales.

Q Who had to do with sales?

A Mr. Manning had to do with that.

Q Mr. Manning handled that?

A Yes, sir.

Q Equipment like this Plaintiff's Exhibit Machine Type A were sold to the Fairbanks Morse Company, were they not?

A Yes, sir.

Q Between February 9 and August 3, 1915?

A Yes, sir, I believe they were.

Q Who manufactured the parts shown here in Plaintiff's Exhibit Defendants' Machine Type A?

A I could not identify that at all.

Q This Sumter Company of Illinois that you say you were connected with, in what capacity was that, or in what way?

A I had charge of the account and the Office.

Q That was all of its extent?

A Yes, sir.

Q Never had any further responsibility than that?

554 A Why, I assisted in several capacities in a general way, of course, but that was my principal work.

Q What is your position now?

A I am manager of the Sumter Division of the Splittdorf Company.

Q Were you manager at any time of the Sumter Electrical Company of Illinois?

A No, sir.

Q Did you ever have virtual charge of all its business here in Chicago for a good many months?

A Yes, during the last few months that it was in existence I did have.

Q Were you not sales manager,—or at least a salesman for a good many years before that?

A I was a salesman from 1913 until about two and a half years, or something of that kind.

Q Then what were you?

A Then I took charge of the office.

Q And then became manager?

A Yes, sir.

Q Now, you know, don't you, that the Sumter Company of Illinois had castings made for these supports, or mountings for magnetos?

A Yes, sir.

Q And machined them up, or had them machined here in Chicago?

A Yes, sir.

Q And provided the springs, and made and assembled the complete ignition equipment, as shown in these booklets, with the exception of the magneto and generator itself?

A Yes, sir.

Q That was done for a considerable number of years, was it not?

555 A No, only for a short period.

Q For how long?

A Well, a short time, perhaps—let me see—I might say a year or a year and a half.

Q When was that?

A Dating from about July or August to the present time—1915.

Q From 1915?

A Yes, sir.

Q To the present time?

A Yes, sir.

Q Under whose authority did the Splitdorf Company—no, the Sumter Company of Illinois, buy, as you have said, the magneto generator proper and then combine it with the other parts, that is, the plug or bracket or support and the yoke and the springs around the electrodes and the electrode arms, and so on, to make up the entire equipment as shown in pages 37 to 44 inclusive of Plaintiff's Exhibit 41, Booklet; under whose authority was that done?

A We bought them complete from the Splitdorf Company.

Q Bought what complete?

A Magnetos and plug castings.

Q I thought you said a little bit ago that the Sumter Company of Illinois made or had made here in Chicago these parts, these castings and assembled the parts.

A We did that on order from the Splitdorf Company; we made up the brackets and then purchased them complete from them and we billed them with the manufacturing of the parts which they didn't furnish.

Q Now, I don't understand that at all. There were some parts, you say, that the Splitdorf Company did not furnish you?

A Yes, sir.

556 Q Now, what complete equipment did they not furnish?

A They did not furnish the bracket nor the springs nor the spring pawls; they did not furnish this end of it. They furnished the magneto.

Q That is to say, the Splitdorf Company did not furnish any of the parts of the structure that is shown on Plaintiff's Exhibit Defendants' Exhibit Machine Type A?

A They furnished it. We made it up on order from them. We bought the plug oscillator complete from the Splitdorf Company, and manufactured the other parts on a purchase order given us by the Splitdorf Company.

Q When you say you manufactured it, you mean the Sumter Company, the Sumter Electrical Company of Illinois, did the manufacturing?

A No, we had it made outside.

Q Who had it made outside? The Sumter Company of Illinois?

A We did, yes, sir.

Q Now, you said, if I understood you, you said you bought

that thing which you had made outside, you bought it from the Splitdorf Company?

A Yes.

Q Is that right?

A Yes, we bought it complete from the Splitdorf Company. The Splitdorf Company billed us for the complete job. We charged for the brackets which we assembled and made up under their direction.

Q You sold it to the Splitdorf Company?

A We sold the bracket.

Q You sold the parts constituting the structure in that Defendants' Machine Type A; you sold that?

A Yes.

Q Then the Splitdorf Company put a magneto on it and sold it back to you?

557 A Yes.

Q Where did they put the magneto on, the part that they sold back to you, where did they do that work?

A It was shipped direct from the factory at Sumter, South Carolina, to the customer, and the customer did the assembling.

Q What?

A The customer did the assembling, and put his own magnetos on.

Q What corporation was doing this work down in Sumter, South Carolina?

A I suppose it was the Splitdorf Company corporation; I don't know what the name of that corporation was down there.

Q Let me see if I follow that: It was the Sumter Company of Illinois that made these parts. Plaintiff's Exhibit Defendants Machine Type A; they either made or had those made by parties other than the Splitdorf Company here in Chicago; is that right?

A That is right.

Q And then they sent those parts where; shipped them where?

A Direct to the customer.

Q That is the engine manufactory?

A Yes, sir.

Q And then the engine manufacturer put the magneto on this shelf or bracket?

A Yes, sir.

Q Now, where did he get that magneto proper?

A Shipped to him from the Sumter works at Sumter, South Carolina.

Q That is the Splitdorf Company?

A Yes, sir.

Q Now, did you know, when, as the Sumter Company of Illinois, you shipped these parts, Plaintiff's Exhibit Defendants Machine Type A, to the manufacturer, that he was going to use that magneto generator equipment attached 558 to it in the manner illustrated in Plaintiff's Exhibit 41; did you know that?

A Yes, sir.

Q Under whose authority did this Sumter Company of Illinois Make these parts, Plaintiff's Exhibit Defendants' Machine Type A; where did they get the right to do that; or who authorized their doing it?

A Why, we always had a written purchase order from the Splitdorf Company of Newark, New Jersey.

Q You kept that on hand all the time?

A No, we had an order for every job.

Q That means, does it, that it was the Splitdorf Company who procured the Sumter Company of Illinois to make these things which you have described as having been made by the Sumter Company of Illinois?

A Yes, sir.

Q And then you shipped the parts which you thus made to the engine manufactory?

A Yes, sir.

Q And billed him for them?

A Yes, sir.

Q Now, how long did that arrangement continue? How long was business done in that fashion?

A Up to the time that the Sumter Electrical Company of Illinois was dissolved. That was the first of July, 1918.

Q July 1, 1918, there was some change, and who carried on the business here in Chicago from that date?

A The Splitdorf Electrical Company of Newark, New Jersey.

Q And you are working now for the Splitdorf Company?

A Yes, sir.

Q Doing the same kind of thing you did previously?

A Yes, sir.

559 Q What organization was it, which one of these, the Sumter of South Carolina, the Sumter Company of Illi-

nois, or the Splitdorf Company, who was making and selling this equipment shown on pages 37 to 44 of Plaintiff's Exhibit 41, Booklet, between February 9th and August 3rd, 1915, as you have said? What corporation was making and selling the things shown in that book during that time?

A The Sumter Electrical Company of Sumter, South Carolina.

Q They were doing that at that time?

A Yes, sir.

Q You said here a little while ago, as I understood you, that the Sumter Company of Illinois billed the engine manufacturer for the parts represented by this Plaintiff's Exhibit Defendants' Machine Type A?

A No, I didn't. That is a job that was billed by the Sumter Electrical Company, Sumter, South Carolina, that you have in your hand.

Q You say that because I am referring to this particular early type?

A Yes, sir.

Q A little later, when you made a smaller plug and so on, but otherwise of the same general construction—what do you call this in your trade?

A Type C-A.

Q Type C-A what?

A Plug oscillator.

Q Is that the type C-A plug oscillator as I have it in my hand?

A Yes, without the magneto.

Q Without the magneto?

A It would be a plug oscillator complete if it had that magneto.

560 Q What?

A It would be a plug oscillator complete if it had that magneto.

Q These plug oscillators, without the magnetos, were manufactured here by the Sumter Electrical Company of Illinois, were they not?

A We had the work done for the Splitdorf Company.

Q You had the work done? You mean you had the casting made at some factory here in Chicago?

A Yes, sir.

Q And where were the parts assembled?

A The parts were assembled in different places, several shops that did the work.

Q Here in Chicago?

A Yes, sir.

Q The Sumter Electrical Company of Illinois had that done? The Sumter Electrical Company of Illinois had that assembling work done?

A The Illinois corporation, yes, sir.

Q So that the Illinois corporation had made up the plug oscillators minus the generator?

A Yes, sir.

Q Those things the Sumter Company sent to the engine manufactories, did it not?

A Yes, sir.

Q For what did the Sumter Company of Illinois bill those manufacturers, the plug oscillator minus the magneto or for the entire equipment including the magneto?

A The entire equipment.

Q Including the magneto?

A Including the magneto.

561 Q And then I presume the manufacturer of the magneto, the Splittdorf Company billed the Sumter Company of Illinois for the magneto alone?

A Billed us for the complete job.

A Including the plug oscillator?

A Yes, sir.

Q They billed you for something you yourselves manufactured or had had manufactured here in Chicago?

A I told you previously that they gave us an order to make up a certain quantity of these plug oscillators, that is, without the magnetos, which we billed to them as they were produced.

Q That is, as they were produced here in Chicago for or on the order of the Sumter Company of Illinois?

Mr. Bulkley: He didn't say that.

Mr. Williams: I am not trying to confuse him. I must confess that I don't understand it.

Mr. Bulkley: It can all be explained in two minutes.

Mr. Williams: Q Can you explain the whole matter?

A Yes, sir.

Q Will you do so?

A When we obtained an order for this apparatus we would write or wire the Sumter factory that we had the order, that we had obtained such an order, or to issue us a purchase order to manufacture a certain sum of brackets and would

quote us a price on them on the complete job. We would have to pay them the price for the complete job, and we would bill it to our customer at whatever price we sold it at. The factory didn't know the price we sold it at, and as we manufactured the plug and we would bill them with what we called the plugs as they were manufactured on their purchase order to us. For instance, we would get an order for 100—

562 Q You say 'we' would get an order. You mean the Sumter Company of Illinois got an order?

A Yes.

Q When the Sumter Company of Illinois got an order, they did what?

A We placed a purchase order with the Sumter, South Carolina works, for that quantity of plug oscillators.

Q That means the Sumter, South Carolina Works, of the Splitdorf Company?

A I presume so, but I am not familiar with those changes down there. There might be the Splitdorf Company at one time and the Sumter Company at another time.

Q Now, you placed an order with them for what?

A For 100 plug oscillators complete.

Q Yes.

A And they would issue an order to us to manufacture the plug.

Q Then they would tell you to make something?

A Yes, sir.

Q Now, you, in this case, the Sumter Company of Illinois—

A Yes, we would farm that work out in Chicago and purchase the goods, and then when we got the job completed we would bill them back.

Q There are too many 'we's' for me. The Sumter Company of Illinois farmed out the order and then when you got the goods from the people to whom the order was farmed out—

A Yes, sir.

Q Then what happened?

A Then we would charge the Sumter Works with our costs—

Q Yes.

A The cost of manufacture of that plug, and they would bill us complete with the plug oscillator; we didn't know
563 what they would charge us at times for the magneto.

Mr. Williams: That is all.

Cross-Examination by Mr. Bulkley.

Q Did the Sumter Company, the Splitdorf Company, always pay the Illinois Company for that which they farmed out here to be made generally in Chicago in connection with plug oscillators?

A Yes, sir.

Mr. Bulkley: That is all."

Plaintiff's counsel here offered in evidence a stipulation relating to two of defendants' machines marked, respectively, Plaintiff's Exhibit Defendants' Machine Type B, and Plaintiff's Exhibit Defendants' Machine Type C. Exhibit C objected to on the ground that it was not a construction which was manufactured and sold by the defendants prior to the commencement of the suit.

Exhibit received subject to the objection.

HARRY G. WEBSTER, called as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 48, residence, Chicago; occupation, consulting engineer. Not related to Mr. T. K. Webster. Witness stated his experience and qualifications as a mechanical and electrical expert, and his familiarity with patents, and further testified as follows:

"For the past 30 years approximately, my occupation has related exclusively to the operation, manufacture, investigation and development of electrical and mechanical devices. I have been employed in various engineering capacities ever since some time prior to the year 1900, and for several years prior to the opening of my present office was chief engineer of the North Electrical Company of Cleveland, Ohio.

I have had much experience in the investigation and development of electro-magnetic apparatus, particularly high speed electro-magnets in which the time factor is a critical characteristic.

This engineering work has included during the past eight or ten years considerable special investigation of ignition apparatus for internal combustion engines of different types.

I have had experience in the installation and operation of gas and gasoline engines. Much of the investigation of the

chemical and electrical apparatus from the standpoint of patentable novelty, or from that of patent infringement.

In connection with these investigations I have had occasion to examine and study many hundreds of patents, and have frequently been called upon to give expert testimony or advice in connection with patent litigation.

Q. Will you explain briefly the construction and mode of operation of internal combustion engines, using, if you see fit, any diagrams or other illustrative matter.

A. In making such explanation I will refer to a chart which has been drawn at my suggestion which chart is entitled 'Engine Cycle.'

An internal combustion engine, like a reciprocating steam engine, has a cylinder, a piston, a crank shaft, a connecting rod, extending between the piston and the cylinder and the crank shaft; but as its name indicates, the source or fuel for the power which the engine produces is burned within the cylinder of the engine itself, rather than under an extraneous boiler as in the steam engine.

565 This chart shows in Fig. 1, and throughout the other figures, a typical engine cycle of the four-stroke cycle type. In Fig. 1 of this chart the piston is shown in the position of the intake stroke, that is, the forward stroke of the piston during which the charge of air and gas is, as it were, sucked into the cylinder.

It will be observed that the intake valve 'G,' is open, the exhaust valve 'H' is closed, and that the piston 'B' is about at the middle of the stroke.

Proceeding with the cycle of the engine, as the cylinder, or the piston, rather, moves to the right, the crank shaft 'E' revolves or the crank 'E,' I should say, revolves with the crank shaft and gradually reaches the position indicated in Fig. 2, just shortly after the beginning of the compression stroke.

In the compression stroke the piston 'B' moves to the left, and in so doing compresses the charge of air and gas which has been taken into the cylinder on the intake stroke. During this compression stroke the valves, both intake and exhaust, 'G' and 'H' respectively are closed. Therefore, the charge of gas and air is compressed, and as the piston approaches the clearance lines, or the clearance position, it is indicated by the dotted line at the left of the cylinder, the igniter 'I' is actuated to produce the spark.

The igniter consists of a stationary electrode and a mov-

able electrode having an arm which carries a contact, engaging a contact on the end of the stationary electrode and just at the proper time in the compression stroke these electrodes are separated and must produce a spark to ignite—effective to ignite the charge which is then under compression. That ignition must take place at just the right time to produce the effective power stroke which follows.

566 The power stroke is indicated in Fig. 3 of this diagram, in which it will be understood that the combustible charge in the clearance space of the cylinder is ignited and has by the heat produced and the increase of pressure which follows, forced the cylinder forward on its third stroke—I should have said piston, and here again, under this condition, the intake valve 'G' and the exhaust valve 'H' remain closed so that all the pressure of the heated gases is exerted on the piston.

That stroke proceeds until the crank shaft is drawn past the dead center, and the cylinder starts in the reverse direction in the exhaust stroke, as illustrated in Fig. 4 of this diagram. And it will be noticed that as the piston moves towards the left-hand end or head of the cylinder under this condition, the exhaust valve is open allowing the products of combustion, the burnt gases, to pass out, leaving the cylinder in position to receive another charge of unburnt gas and air, as the cycle starts again in the condition illustrated in Fig. 1.

Before completing this answer I should, perhaps, point out that whereas the combustion of the charge in the cylinder is frequently referred to as an explosion, that there is an actual interval of time which does take place, and which must be provided for, in order to allow the complete inflammation of the charge of gas and air in the cylinder. It is because of the necessity for such an interval that it is necessary that the spark which ignites that charge should take place at a particular time in the compression cycle of the engine, or just as the compression reaches its extreme amount.

In starting the engine—for instance, in starting it by hand, where the fly wheel is spun, that ignition must take place or is ordinarily adjusted to take place at about the dead center, or about the extreme compression, but where an engine has got to running at a higher speed than that, the spark must
567 take place at an interval before the dead center position is reached, in order that the charge may be inflamed, completely inflamed, or sufficiently inflamed to produce the maxi-

mum pressure at the time when or just after the dead center has been passed.

If the spark occurred too late in the revolution of the fly wheel, takes place just at the end—at the dead center position, or just after that has been passed, then while the engine will run, it will operate very inefficiently and not produce the power that is got with the advanced spark, as perhaps your Honor knows.

The Court: I understand that.

Mr. Williams: Will you state briefly and in a general way what means have been employed for this ignition in internal combustion engines.

A In the early stages of the internal combustion engine art, the charge was ignited by a flame, so arranged that after the charge had been taken into the cylinder and about the proper time in the compression stroke, this flame would be brought in contact with the charge in the cylinder and the charge exploded.

I remember very clearly an engine operating in that way, which I saw frequently about the year 1905. But, that is regarded an obsolete method of operation at the present time.

Later what was called the hot tube ignition was used, that method of ignition being a tube or pipe connected with the cylinder, and kept at a considerable degree of heat, red hot, or pretty nearly white hot, by means of a flame constantly burning outside the cylinder. There was a chimney around this tube. The tube came up one side and this chimney was around it and caused the flame to burn under it, the idea being that the compression of a new charge would force sufficient unburned gas into this little pipe until it reached a point where the heat was sufficient to explode the gas. That

568 class of engine was considerably used and I think is still used. I had occasion to handle an engine of that kind about the year 1901.

But in later years, I would say for possibly the past ten or fifteen years, the most generally used ignition means has been that of an electric spark. I do not refer to ignition by compression of the charge, as in the Diesel engine, because that is an entirely different sort of cycle.

But electrical ignition is the thing that has been used almost universally for the past ten or fifteen years.

Q Can the means employed for electrical ignition, as you have described it, be subdivided or classified in any way; and, if so, how?

A Yes. A very good classification might be expressed as that of one type of ignition, one general type of ignition, being jump spark ignition, in which a spark plug with permanently separated electrodes extends within the cylinder of the engine, and a high tension spark is made to jump across between the separated points.

As compared with that is the other general type, what is generally known as the make and break ignition, in which a movable and stationary electrode are permanently located within the engine cylinder, and contact between these two electrodes mechanically broken at the instant that it is desired to make the spark.

Q What sources of electrical current have been employed in connection with this jump spark ignition equipment?

A In the jump spark ignition equipment the sources of current have been batteries operating by means of induction coil and vibrator, or in some cases direct current generators were used in the same way.

In later years the most popular source for jump spark ignition has been the high tension magneto.

569 With respect to the make and break system of ignition which operates at a comparatively low voltage, the current for this type of ignition has been furnished by batteries, by small direct current generators, by rotary magnetos, and by oscillating magnetos.

Q What various kinds of electrical ignition, what form or type, is and has for the past ten or fifteen years been commonly employed in stationary or portable gas engines or gasoline engines?

A My understanding is that for the past ten or twelve years and possibly for the last fifteen years, that on small stationary engines, running at comparatively low, or at medium speed, magnetos have been more generally employed. Possibly if we go back as far as fifteen years, the more general source of current at that period was the battery, with a kick coil inserted.

Q Will you explain briefly what an oscillating magneto is, as compared with a rotary magneto.

A A rotary magneto is generally understood to be one that is permanently geared to some rotating shaft of the engine with which it is associated, and geared in a particular angular relation, the reason for this being that the rotary magneto produces ordinarily a brief current impulse twice in each revolution of its inductor or armature. This magneto

is provided with a circuit breaker, which is intended to interrupt the sparking circuit at just the proper time, and in case of the make and break ignition, this circuit breaker control extends to the movable electrode within the engine cylinder.

That has the limiting characteristic in most cases, if not in all cases, that the engine must be cranked at a fairly vigorous rate in order to produce a satisfactory spark; and the further limiting characteristic that it is in constant motion, rotating throughout the entire operation of the engine, regardless of whether a spark is necessary in the cylinder or not. That is, it rotates all the time.

As compared with this, the oscillating magneto operates at intervals. It is of the same general type of magneto as the rotary magneto, in many cases, or as in the case of that manufactured by the complainant company, it is an inductor type of magneto, which is particularly adapted for oscillating work.

The distinctive characteristic of the oscillating magneto, is that the spark—or that the current, by means of which the spark is produced, occurs as a single impulse of minute duration during the return swing of the armature of the magneto, after it has been cocked or rotated against the spring tension, and then released by the disengagement of the push rod.

I don't know that your Honor is fairly clear as to what the relation of the push rod and the magneto is, and possibly I can illustrate it by means of this machine here.

This machine is marked Plaintiff's Exhibit Defendants' Exhibit Type B. Looking at the machine as your Honor is from the front, the push rod engages a part, which I will call a trip finger at an angle. This is the device, the push rod itself (indicating). Now, this push rod is mounted ordinarily on the exhaust rod of the engine, and during the compression stroke, it is moved towards the magneto in such a way that it rotates this yoke, which is the piece that the two springs are fastened to in that direction, and in this machine rotates it for about 30 degrees. At the proper time this push rod is forced out of engagement with the trip finger by the action of this cam projection, which is above the point of engagement. When that occurs the armature, or inductor, flies back in the direction of normal position with extreme rapidity, probably in the period of eight to ten one-thousandths of a second, and in doing so makes an electrical impulse, which

must be taken advantage of at just the right time, in order
571 that the spark may be made in the cylinder, and the way
in which that impulse is taken advantage of is by the
striking of—in this case, a cam shaped surface carried in-
tegrally with a yoke which on the rebound or overthrow of
the yoke of the rotor of which it forms a part, strikes one
end of the movable electrode, the end of which you can see
there, with sufficient force to separate the contact points
within the cylinder. If that action occurs at just the right
time a spark will be produced which will successfully ignite
the charge.

Q Will you illustrate or indicate in any way about the
duration of that electric wave, the generation of which you
have described?

A Yes, I will illustrate that by reference to an oscillo-
graph record made under my direction, which shows char-
acteristically the shape and direction of that current im-
pulse in a graphic way.

I don't know whether or not your Honor is familiar with
the instrument known as the oscillograph, or not, but the
oscillograph instrument is comparatively simple, but by
means of it what seemed to me some rather wonderful re-
sults can be secured in the way of analyzing the events which
take place within minute intervals of time. It is a device
in the nature of a box, possibly three or four feet long and
about 18 inches square. In one end of this box are posi-
tioned three mirrors, in the standard type instrument as
manufactured by the General Electric Company, from which
are reflected small, but intense points of light upon a moving
photographic film. These mirrors are each suspended upon a
pair of electrical conductors, lying within the field of a
powerful electro magnet. An arc light positioned off at one
side throws a powerful beam towards the box, and on or
against three small prisms from which three beams are di-
rected against these mirrors and reflected back toward a ro-

572 tating cylinder, about which a photographic film is
wrapped. The fact that these mirrors are mounted on
electrical conductors in a magnetic field, results in making
it possible, by passing an electric current through the con-
ductors upon which any particular mirror is mounted, to
cause that mirror to vibrate or oscillate in a manner corre-
sponding almost exactly with the shape of the current wave
that passes through those conductors. That oscillation in

effect—results, I would say, in moving a beam of light transversely across this film, which is in position to be rotated with the cylinder. The result is that when a mirror is vibrating at the same time that the cylinder is rotating, you have spread out on a film a record made by the beam of light which corresponds to the current wave which produces it, and the time of the occurrence can be calibrated, as well as the extent or amplitude of the current wave which causes the vibration.

If I have made that clear to your Honor I want to show the result of such an operation in reproducing graphically the current wave produced by this sudden recoil of the armature of one of these oscillating magneto machines.

This is a print made from such a photographic film. This is the film from which the print was made. I have added here explanatory characters. The line 'T' running along the center of the film, is what we call a time line and is produced for the purpose of timing the variations in the current which we wish to record. This line is produced by connecting the center one of the three mirrors in circuit with a source of 60-cycle current. The result of that is that the center mirror vibrates at the rate of 60 cycles per second. Therefore, one cycle of this center curved line represents one-sixtieth part of a second, and that gives us the basis for calibrating this film in the way indicated at the upper left. In other words, one inch of this film represents 247 ten thousandths of a second. The line 'M' in this case, is a small steady

spot of light which is registered in the film, because of the fact that we had no current circulating through the electrical conductors supporting the mirror from which this line reflects. In other words, that mirror was not moving. Therefore, the spot of light from the mirror draws a straight line. Perhaps it would be better understood if I explained that this record is made on a film wrapped around a cylinder which is rotating in that way before the mirror, and, therefore, represents the spots of light as they vibrate transversely. The line 'C' illustrates the impulse of the current which occurs during the recoil and subsequent oscillation of the armature, or inductor of the magneto. The starting point is indicated at the right. As this film starts to rotate in the oscillograph, the light spark from the mirror on the electrical conductor connected in circuit with the magneto is at first fairly straight. At the point marked 'I' the magneto cocking operation starts,

and because of that cocking operation, which was fairly rapid in this case, there is a slight impulse of current in a reverse direction, to that of the impulse which is going to be used for producing the spark. The end of the cocking operation is at point '2.' At that point the trip finger is released from the push rod, and the inductor or armature recoils at this extremely rapid speed back towards its original position. In that recoil it makes an impulse of current which registers this sharp curve on the diagram. That is curve '3.' The current rises almost instantly to its extreme value, and almost as quickly drops back to zero value again, and it is during that rise of current that the contact must be broken in order to produce an effective spark to operate a gas engine, and the time period during which that impulse occurs is as shown in this film approximately two and a half one-thousandths of a second. That will illustrate the extreme delicacy of the adjustment which must be secured between the armature 574 and the striker and contact with which it cooperates.

Mr. Williams: We offer in evidence the oscillogram, film and print, submitted by the witness, and ask that they be marked Plaintiff's Exhibits 46 and 46-A respectively.

(Said film and print were then received in evidence and marked Plaintiff's Exhibits 46 and 46-A respectively.)

Q Have you read and do you understand the patents in suit No. 1,280,105 to Kane, No. 13,878, reissue Number, to Podlesak, and No. 1,101,956 to Podlesak?

A I have and I do.

Q Will you describe the applicability of the invention of the Kane patent in suit, No. 1,280,105, to an internal combustion engine, and its utility and advantages when thus applied?

A The specification of the Kane patent in suit points out first that the object of the invention is to—"

At this point the examination of the witness, Webster was suspended to permit plaintiff to call and examine,

FREDERIC A. FISCHEL, who testified as follows:

Direct Examination by Mr. Williams.

Age, 36; residence, Chicago; lawyer by profession. Attorney for Webster Electric Company, and director of the company for past six years, and assistant secretary for a year and a half. That applies both to the present Webster Electric Company of Wisconsin and to the Webster Electric Company of West Virginia. The witness further testified:

Q Now, will you state how the officers, directors, stockholders, employes, business customers, of the Wisconsin corporation compare with those of the West Virginia corporation?

575 Objected to as immaterial and irrelevant and as not calling for the best evidence. Objection overruled.

Mr. Peaks: I do not believe that counsel intended to inject into that question the identity of the customers.

The Court: Have you got 'customers' in there?

The Court: Strike out the 'customers.'

A They are identical.

Mr. Peaks: That is a pretty large order. I move to strike that out.

The Court: Yes.

Mr. Peaks: As a conclusion.

The Court: Strike it out.

The witness further testified that as assistant secretary of both corporations he had had the custody of the minute-books and the stock certificate books and the stock ledgers of both corporations, but did not have the custody of them at the time he testified. He further stated that the Wisconsin corporation was organized in the month of March, 1918 and the West Virginia corporation dissolved in the month of May, 1918. He further stated that he had compared the list of stockholders of the West Virginia corporation, as of the date of the physical transfer by deed and bill of sale and assignment to the Wisconsin corporation, with the list of stockholders of the Wisconsin corporation, that they did not differ at all—that the identical persons who appeared as stockholders of the West Virginia corporation also appeared as stockholders of the Wisconsin corporation; also that the directors and officers of the two corporations were the same; also that

the Wisconsin corporation continued doing business at the same plant as the West Virginia corporation, and that the employees of the two corporations were the same, except as labor might shift. The principal employes were the same.

576 The witness further testified as follows:

“Q Will you state in a general way what was the nature of the transfer by which the assets were transferred from the West Virginia corporation to the Wisconsin corporation?

A About the first day of February, 1918, the directors of the West Virginia corporation held a meeting, in which a resolution was adopted, to the effect that it was deemed to be to the best interests of the West Virginia corporation to reorganize, and that there be organized in the State of Wisconsin a corporation, with a capital stock of six hundred thousand dollars; that the Wisconsin Company was to succeed to and acquire and own all of the assets, the patents and rights, of every kind and description, of the Webster Electric Company of West Virginia; and was to take over these assets, and assume all of the obligations and liabilities and liens and encumbrances against the properties of the West Virginia Company, and was to issue forty-eight hundred and sixty shares of the capital stock of the new company, and deliver them to three gentlemen as trustees, Mr. Webster, Mr. Rosenwald, and Mr. Brown. These trustees were to hold these 4860 shares, and exchange these shares with the shares of the West Virginia company which the old stockholders held. For every share of preferred stock which a shareholder in the West Virginia Company held, that holder of preferred stock was to receive one and three-quarters shares of the common stock of the Wisconsin Company; and for every share of the common stock of the West Virginia Company that such stockholder held he was to receive one share of common stock of the Wisconsin company. The Wisconsin company was then organized, in the month of March. The certificates of stock were physically delivered to these three trustees, and the three trustees communicated with the stockholders of the West Virginia company, and all of the stockholders of the West Virginia company turned over to the trustees their West Virginia stock, and took in

577 exchange therefor the shares of stock of the new company; and the Wisconsin company proceeded, standing at the same point where the West Virginia company stood.

* * * *

Q The trustees who thus acquired the stock of the two corporations then did what with respect to certificates of the two corporations?

(Objection and discussion between Court and Counsel.)

A There were certain instruments in writing executed, assigning the patent and the properties and the real estate, from the West Virginia corporation to the Wisconsin corporation.

Mr. Williams: Q Did you, Mr. Fischel, represent the Webster Company, or act for it, in connection with the execution of the Podlesak contract of February 5, 1914, regarding which you have heard testimony?

A I did.

Q Who drafted those contracts originally?

A Mr. Harry Podlesak.

Q They were presented by him, were they?

A They were, to me.

Cross-Examination by Mr. Peaks.

Q You say he drafted them originally. Who drew them finally, before execution? You say Henry Podlesak drew them originally. Now I am asking you who drew them finally, before they were executed.

A Mr. Podlesak presented a draft of what he desired, some time in the fall of 1913, and in January, 1914 his draft was typewritten by me, and it was taken by Mr. Podlesak and myself over to the office of Lynn Williams, and Mr. Lynn

Williams made some additional suggestions that he wanted in handwriting on it, and they did not seem acceptable to Mr. Podlesak, and finally Mr. Podlesak insisted on some of his own suggestions and interpretations, and that was the final contract.

Q That is to say, the contract as finally executed was the result of mutual changes?

A No. It was the result of the suggestions of Mr. Harry Podlesak, finally.

Q And of Mr. Lynn Williams?

A There were a few concessions made by Mr. Lynn Williams, that is, a few suggestions made by Mr. Lynn Williams, in which Mr. Podlesak acquiesced.

Q And were there any made by Mr. Podlesak in which Mr. Williams acquiesced?

A Oh, probably.

Q Yes.

A I suppose so.

Redirect Examination by Mr. Williams.

(Objection and discussion, no answer to question.)

Mr. Williams: Q This Exhibit D to the contract of February 5, 1914, contains a first substantive paragraph following the last of the 'whereas' clauses, which reads as follows:

(Paragraph read.)

Now, as to that paragraph of this contract, by whom was that drafted?

(Objection and discussion between Court and Counsel)

A That language, or substantially that language, was incorporated in the draft of the proposed contract which was submitted to me by Harry Podlesak.

(Objection renewed and sustained and testimony ordered stricken.)

Recross Examination by Mr. Peaks.

Witness stated that the capital stock of the West Virginia corporation was three hundred or three hundred and fifty thousand of common and one hundred thousand of preferred, and that of the Wisconsin corporation six hundred thousand common, no preferred. That of the six hundred thousand of the capital stock of the Wisconsin corporation four hundred and eighty-six thousand was given in exchange for all of the stock of the West Virginia corporation. The balance of one hundred and fourteen thousand remained in the treasury of the Wisconsin corporation and had not been issued, except that subsequent to the transfer an arrangement was made by which some of the employees of the corporation could acquire a certain number of shares of stock, and on their paying for it to the treasury, certificates were issued to them. Witness did not know whether the balance of one hundred and fourteen thousand had been subscribed or not.

Witness further testified that the holders of the common stock of the West Virginia Company did not hold preferred stock in exact proportion to their holdings of common stock, and that therefore by the transfer to the Wisconsin corpora-

tion on the differential basis there was accomplished a change in the proportionate interest of the stockholders in the Wisconsin corporation as compared with the West Virginia corporation in some instances. Being asked as to when he made his comparison to learn the identity of the stockholders, directors and officers of the two corporations, witness stated that he had made it almost daily from about the 5th or 6th of February up to about the 1st of April, and that there were transfers of stock during that period after the completion of the incorporation of the Wisconsin company; but those transfers were not in consummation of something which had been intended or arranged prior to the transfer. The identity of stockholders, directors and officers existed from February to April.

* * * *

Cross-Examination by Mr. Thompson.

Q Has this contract, that the court's attention has been directed to, has that been formally offered in evidence?

This inquiry of counsel led to an extended discussion 580 between all of the counsel and the Court regarding the final contract of settlement between Emil Podlesak and the Webster Electric Company, after which the following question was put by Mr. Thompson and answered by the witness:

“Q Mr. Fischel, was the final contract, whereby the stock of Emil Podlesak was taken over, that is, I am referring now to the stock in the West Virginia corporation, made prior or subsequent to the organization of the Wisconsin corporation?

A The contract whereby I acquired from Emil Podlesak his shares of stock in the West Virginia Company was completely executed and delivered on the 15th day of January, 1918, at Racine; and the reorganization of the corporations took place in March subsequently thereto. In fact the Board of Directors of the West Virginia company took no action toward a reorganization until the first day of February, 1918, and this contract had been completed on the 15th day of January, 1918. The paper which has been submitted to me is a copy of the instrument which was executed by Emil Podlesak and the Webster Electric Company, of Racine, on the 15th day of January, 1918, excepting that this copy does not bear the signatures nor the seals of the respective notaries.

Recross Examination by Mr. Peaks.

Q Mr. Fischel, I gather that you have the impression in your mind that by this transfer from the West Virginia corporation to the Wisconsin corporation there was no practical or substantial or effective change in the situation accomplished at all. What do you understand was the object? It was not done for fun, was it?

A No, sir. The object was done for a purpose of simplicity and convenience; we were at that time located in Racine, Wisconsin, and we were subject to the sovereignty, first, of the United States Government, and to the State of West Virginia, and to the State of Wisconsin; we had to make a dozen reports, to a dozen different authorities.

Our plant was there. We bought a new home. We were doing business there. The State of Wisconsin was very exacting in what it wanted from us, and we made up our minds, 'We are established, and we are going to stay in Wisconsin.'

Q Yes.

A Theretofore we had been in Tiffin, and in Chicago, and therefore we were licensed to do business under the laws of the State of West Virginia, but we felt at home in Wisconsin, and we were going to stay there.

Q And Ohio, I suppose. Now, you also had it in mind to also accomplish an increase of the capital stock, and the ownership of some of the increased capital stock, by certain individuals who were not then stockholders, hadn't you?

A No.

Q Didn't you tell us a little while ago that it was intended to introduce a profit sharing scheme, that would make some of the employees at Racine stockholders?

A That had been planned after we were fully incorporated, and felt that everything was set fine to go ahead and progress.

Q Then why wasn't it incorporated, in Wisconsin, for the same capital stock, and the same kind of capital stock, that it had been in West Virginia, in no change was intended to be accomplished?

A Why, when Mr. B. V. Becker, and Messrs. Simmons & Walker, at Racine, went to the physical organization of the Wisconsin Company, they evidently came to some conclusion that it was a good thing to incorporate for \$600,000. A statement was taken of the assets, the net—

Q I did not ask you that.

A Well, I am trying to explain why they got six hundred thousand.

582 Q Well, I did not ask everything they did in accomplishing it.

A I think you are right.

Q I asked the object. Now, when was it decided, and by whom was it decided to accomplish this differential in the transfer of preferred over common, for the Wisconsin common?

A By the directors of the West Virginia Company. Do you want the reason, Mr. Peaks?

Q I do not know that it is material. When was it decided to incorporate for \$114,000 more than the capital stock of the West Virginia Company?

A On the first day of February, 1918, the directors of the West Virginia Company adopted a resolution, a part of which said that there shall be organized a Webster Electric Company, of the State of Wisconsin, with a capital stock of \$600,000, divided into six thousand shares, of the par value of one hundred dollars each.

Q And did that say by whom the one hundred and fourteen thousand of excess should be subscribed?

A No. That resolution was silent on that subject, as I remember it. The resolution is here, in the book, which I will present to you.

Mr. Peaks: Yes. I see.

The Court: You understand, by the Wisconsin laws it was only necessary to subscribe half; not all of it.

Mr. Peaks: That is one of the things that, not knowing about, I was trying to cover, so that whichever way it might happen to go—

The Court: Fifty per cent must be subscribed.

Mr. Peaks: And the rest—

The Court: The rest will go—

Mr. Peaks: The rest is treasury stock, and they can do whatever they please with it.

583 The Court: Surely.

Mr. Peaks: It is just the other way here. I think that is all.

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Redirect Examination by Mr. Frank.

Q Mr. Fischel, Mr. Peaks I think started to ask you, and did not allow you to answer, why the differential, what he has referred to as the differential, was made. Will you now explain?

(Objection, overruled.)

A Because we unlucky holders of preferred stock never got any dividends on our preferred, which was cumulative, and at the time that this transfer was to be made, the stockholders, the preferred stockholders, were to be made whole on what belonged to them.

Recross Examination by Mr. Peaks.

Q And therefore you were given 175, for preferred?

A Or a holder of the preferred stock of the West Virginia Company had the right to turn in his preferred stock to the West Virginia Company, and get for every share of it the sum of \$135 in cash.

Q Or 175, in Wisconsin stock?

A In Wisconsin stock.

Q How much did you give Emil Podlesak for his preferred?

A For his preferred?

Q Yes.

A Well, there was a lump sum given to Emil Podlesak, as referred to in the contract, which you asked to be introduced in evidence.

Q Well, how much was computed as the value of his preferred, in arriving at the lump sum?

A I am frank to say I do not know, at this time. * * *
584 That was before this plan of reorganization had been given any thought by the directors.

Q Yes, two weeks before.

A Two weeks before.

Here followed a discussion between counsel and the Court in reference to the final contract of settlement between Emil Podlesak and the Webster Electric Company. Counsel on neither side of the case desired to offer it in evidence as part of their case, but the Court having expressed the opinion that it ought to go into the record, it was introduced, and read as follows:

Memorandum of Agreement Made and executed this 15th day of January, A. D. 1918, by and between Tesla Emil Podlesak and Webster Electric Company, a corporation organized under the laws of the State of West Virginia, Witnesseth:

Whereas, there is now pending in the United States District Court, for the Eastern District of Wisconsin a mandamus suit brought by said Podlesak against said Webster Electric Company; and

Whereas, there is pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division, an equity suit by the Webster Electric Company against said Podlesak and others, known as Equity No. 553, and a common law suit likewise pending in said Court brought by the Webster Electric Company against Podlesak known as No. 32213; and

Whereas, said Tesla Emil Podlesak is the owner and holder of twenty-six (26) shares of the preferred stock and two hundred seventy eight (278) shares of the common stock of the Webster Electric Company and has an equitable interest in a certain promissory note made by the Webster Electric Company, dated the day of , under an arrangement known as the Webster Electric Syndicate Agreement; and

Whereas, said Podlesak is the owner of Patent Application No. 15198, now pending in the United States Patent Office, as said ownership may be negatived, limited or qualified under paragraph six (6) of this contract; and

Whereas, said Podlesak has made a claim for certain unpaid royalties alleged to be due him from said Webster Electric Company; and

Whereas, the Webster Electric Company has asserted claims by suit and otherwise for large sums of money against said Podlesak; and

Whereas, the parties hereto are desirous of settling and terminating their differences, and the Webster Electric Company desires to procure the stock in its Company held 585 or controlled by said Podlesak and to acquire his equitable interest in the promissory note heretofore referred to;

Now, Therefore, in consideration of the premises and One (\$1.00) Dollar, and other good and valuable consideration, by each of the parties to the other in hand paid, receipt of which is hereby acknowledged, the parties hereto mutually agree as follows:

First: Said Podlesak hereby simultaneously with the execution of this agreement transfers, assigns and sets over to the Webster Electric Company, or its nominees, two hundred seventy eight (278) shares of common stock and twenty six (26) shares of preferred stock in said Webster Electric Company.

Second: Said Podlesak hereby assigns, transfers and sets over to the Webster Electric Company or its nominees, his share of the promissory note of the Webster Electric Company above referred to, and also the receipt heretofore issued by Frederic A. Fischel, Manager, Webster Electric Syndicate, to the said Emil Podlesak, evidencing his interest in said promissory note.

Third: Said Podlesak hereby agrees that the mandamus suit now pending in the United States District Court, for the Eastern District of Wisconsin, may be dismissed forthwith without cost to either party, and to enter the proper order dismissing said action.

Fourth: Other than and expressly excepting and excluding herefrom the matters contained in paragraphs nine, ten, and twelve hereof, said Tesla Emil Podlesak remises, releases and forever discharges, and by these presents does, for himself, his heirs, executors and administrators, remise, release and forever discharge the said Webster Electric Company, its successors and assigns, of and from all manner of actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which he may now have against the Webster Electric Company, or ever had, or which his heirs, executors or administrators hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents.

Fifth: Said Tesla Emil Podlesak agrees that he will not own, hold or become in any manner, directly or indirectly interested in any of the capital stock of the Webster Electric Company.

Five—a—Said Tesla Emil Podlesak agrees that he will not for any reason or under any circumstances, or as incident to any right or privilege whatsoever, hereafter endeavor to acquire access to any of the books or records of the Webster Electric Company.

586 Sixth: Said Tesla Emil Podlesak hereby grants to the Webster Electric Company a personal, non-exclusive, shop right license to manufacture, use and sell the invention or improvement described, set forth, or claimed in an application for United States Patent in Ignition Mechanism, Serial No. 15,198, filed by him March 18, 1915, and in any patent or patents that may be issued pursuant thereto or to any division or renewal thereof or in the reissue of any patent that may be issued pursuant thereto, within and throughout the United States of America and the territories and possessions thereof, for and during the term of said patents, or any of them; subject, however, to any rights the Sumter Electrical Company and the Splittdorf Electric Company may have or claim to have in said invention, and in any patent or patents that may be granted thereon.

Seventh: Tesla Emil Podlesak hereby releases and assigns to the Webster Electric Company, any and all rights, demands or claims which he may now or hereafter have in, to or under a certain assignment and agreement entered into February 5, 1914, between Emil Podlesak and the Webster Electric Company relating to foreign patents and applications, and in, to or under any of said foreign patents or applications there-in mentioned.

Eighth: The Webster Electric Company hereby dismisses and agrees to enter the proper order dismissing the suit pending in the United States District Court for the Northern District of Illinois, Eastern Division, known as No. 32213 and the suit instituted in the Circuit Court of Cook County, Illinois, known as Gen. No. 336774, in which action no service of process has been made and no appearance entered, both without costs to either party, as well as any and all other suits which may have been instituted by it against said Tesla Emil Podlesak, excepting only the suit mentioned in paragraph nine (9) hereof.

Ninth: The Webster Electric Company agrees to indemnify, hold, save and keep said Tesla Emil Podlesak entirely free and harmless against all damages, costs and any and all liability of any and every kind, which may arise out of or in connection with the equity suit pending in the Northern District of Illinois, Eastern Division, equity No. 553, or any decree arising therefrom, and to reimburse said Tesla Emil Podlesak for any and all expenses, loss or damage to which said Tesla Emil Podlesak may hereafter be put, or sustain in said matter, and to promptly satisfy and discharge any

and every judgment or decree which may be rendered against said Tesla Emil Podlesak in said action; it being understood that said Tesla Emil Podlesak had paid all costs, attorneys fees and other expenses, pertaining to said suit up to the date hereof, and that the Webster Electric Company shall, in no wise, be bound or obligated to assume or pay any costs, expenses or attorneys' fees incurred or contracted by the said Tesla Emil Podlesak in connection with or growing out of said suit, on or prior to the date hereof.

Tenth: The Webster Electric Company has simultaneously with the execution of this agreement, paid to said Tesla Emil Podlesak the sum of Thirty One Thousand Five Hundred eighty nine (\$31,589.00) Dollars.

587 Eleventh: Other than the matters contained in paragraph nine (9), and for the considerations of this contract, The Webster Electric Company has remised, released and forever discharged, and by these presents does, for itself, its successors and assigns, remise, release and forever discharge the said Tesla Emil Podlesak, his heirs, executors and administrators, of and from all manner of actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which it now has against said Tesla Emil Podlesak, or ever had, or which its successors or assigns hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date of these presents.

Twelfth: It is expressly understood and agreed, anything in this contract to the contrary notwithstanding, that the parties hereto have not included, passed upon, settled or disposed of any rights, claims or contentions of the Webster Electric Company, the Splitdorf Electric Company, the Sumter Electrical Company, or of said Tesla Emil Podlesak pertaining to any of the matters and things mentioned, embodied or described in the contract of September 4, 1915, between said Tesla Emil Podlesak and the Sumter and Splitdorf Companies, copy of which said contract is hereto attached, marked Exhibit A for identification and hereby made a part hereof.

In Testimony Whereof the party of the first part has hereunto set his hand and seal, and the party of the second part has caused these instruments to be executed by its President, its corporate seal hereunto affixed, attested to by its

Secretary, pursuant to power and authority granted by the Board of Directors of said Company, this day of January, A. D. 1918.

(Seal)

WEBSTER ELECTRIC COMPANY

By

Its President

Attest:

.....
Secretary

588 State of Wisconsin }
County of Racine } ss:

I,, a Notary Public in and for said County, in the State aforesaid, do hereby certify, that Tesla Emil Podlesak, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this day of January, A. D. 1918.

.....
Notary Public.

State of Illinois }
County of Cook } ss:

I,, a Notary Public in and for said County, in the State aforesaid, do hereby certify that T. K. Webster, personally known to me to be the President of the Webster Electric Company, and Frederic A. Fischel, personally known to me to be the Assistant Secretary of said Company, whose names are subscribed to the foregoing instrument, as such President and Assistant Secretary, appeared before me this day in person and simultaneously acknowledged that as such President and Assistant Secretary, they signed and delivered the said instrument as President and Assistant Secretary and caused the corporate seal of said Company to be affixed thereto, pursuant to authority given by the Board of Directors of said Company, as their free and voluntary act, and as the free and voluntary

act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this day of January, A. D. 1918.

.....
Notary Public.

589 HARRY G. WEBSTER, resumed the stand on behalf of plaintiff, and further testified as follows:

Direct Examination Resumed by Mr. Williams.

Q Mr. Webster, I have asked you, in substance, this question, I believe: Will you describe the applicability of the invention of the Kane patent, No. 1,280,105, to an internal combustion engine, and its utility and advantages when thus applied?

* * * * *

A The specification of the Kane patent starts out by stating that the object of the invention is to provide simple and efficient devices of the character mentioned, that is, magneto generators for ignition systems of explosive engines. It a little later on states that:

‘My invention is particularly adaptable to the type of magneto generators employing an oscillatory armature or inductor, and in connection with the make and break type of ignition systems.’

The oscillating magneto, when used to its full advantage, comes pretty near being an ideal source of current for a make and break ignition system; but the fact seems to be that prior to the advent of the Kane improvement the use of such magneto in such a system was comparatively limited. The reason for this I believe to be in large part due to the failure of the constructors of that type of mechanism to recognize the characteristics of the oscillatory magneto to the full extent. By “these characteristics” I mean those to which I called particular attention in the preceding part of my testimony,—that is, that the current impulse produced in the recoil of the rotor of the magneto is of extremely transitory character, and must be utilized at an exact instant, in order to secure the best results.

590 The problem, therefore, with which Mr. Kane seems to have been confronted, in his effort to improve

the old style magneto, involved, whether he realized it or not, what might be called a sort of three-point synchronism; in other words, to use that oscillating magneto and the make and break igniter to its full advantage, it is necessary that the contact electrodes must be separated at a pretty definite time with regard to the cycle of the engine, and that the current impulse produced by the magneto generator must occur at almost—at the exact instant at which the contact electrodes are separated. There is a triple synchronism, as your Honor will see, between those three events. The spark must be timed in relation to the engine; and the oscillator rotor must be timed with respect to the separation of the sparking contacts.

Now, I am not going to take the time of the court pick out places in the specification where this Kane structure is described. It, as I think the court recognizes, is clearly set forth in the specification, and I think I can best explain just the line along which Mr. Kane proceeded in accomplishing this improvement by a reference to the machine which he had to start with and the one which he produced, that is, by reference to the physical devices themselves.

This big machine here, Plaintiff's Exhibit No. 11 (indicating exhibit) is the one with which the Harvester Company had so much trouble, and which they complained about. As it is mounted on the engine, that is, on the cylinder of the engine, the cylindrical orifice on the inside of the magneto structure is fitted onto a boss, and supposed to be held there rigidly.

As a matter of fact, it was because of its extreme weight, it appears to have been very difficult to hold it in a rigid position.

The rotor of this machine, which includes the four armed armature piece, the shaft to which it is attached, and
591 the yoke pieces, including the upwardly projecting trip finger, was cocked or initially actuated by a push rod moved by the engine across the small roller opposite the upper end of the trip finger, and thrust into a cocked position; and at the proper time, or so nearly as possible, was released and the rotor recoiled. The initial engagement and subsequent release of the trip finger by the push rod is related to the timing of the ignition with respect to the cycle of the engine. On the recoil of the rotor, its motion is transferred to the sparking electrodes, by means of the small rod extending in the direction opposite from the push rod, and connecting, by means of the coil spring, and the small washers, with

an oblong pole in the arm to which the movable electrode is fastened; and it is by this means that it is attempted to produce the separation of the electrodes and the ignition spark at the proper instant in the recoil swing of the rotor.

The machine is heavy, massive, and as it appears, would not stay in position. It will be recognized that any slight angular variation of the magneto upon the boss to which it is fastened would necessarily destroy the time relation, either with respect to the cycle of the engine, or with respect to the synchronism of the rotor movement with the breaking at the spark electrodes or both.

This seems to be the problem which faced Mr. Kane. His solution of it I will explain by reference to the physical device marked Plaintiff's Exhibit 12.

In this device it will be seen that the magneto is of much the same general form as that in the older and unsatisfactory machine, but that it has been brought into unitary relation with the spark plug body carrying the stationary and movable electrodes.

In this case that association has been accomplished by extending an arm from the flange of the spark plug, and mounting the magneto proper directly in or on this arm.
592 The rotor, comprising the four-armed armature, the shaft, the yoke, which is rigidly secured to the shaft, and the upwardly extending trip finger, is of substantially the same form in the old machine, but has now been brought into a relation with the contact electrodes such that after it has been cocked by the engine it then on recoil directly engages an outer arm fixed to the movable electrode.

Your Honor will recognize that by bringing the rotor,—that portion of it which acts as a hammer to strike the electrode arm, into direct physical engagement, that the possibility of securing accurate timing as between the breaking at the spark contacts and a particular time in the recoil swing of the rotor has been materially increased.

The result of that new relation of the parts was in effect making the device such that the movement of the sparking electrodes, and the return swing of the rotor was inherently synchronized, with respect to the particular point in the return swing at which the break at the spark electrodes must occur, in order to secure the best and most efficient spark.

In addition to that, the structure has been made a unitary one, embodying a much greater degree of physical strength and convenience and adaptability to almost any type of en-

gine, and required no work on the engine except that necessary to mount the spark plug itself upon the cylinder wall.

Mr. Williams has illustrated how much easier it is to remove this plug, examine the electrodes, and to put it back on the engine, without disturbing that essential relation between the rotor and the electrodes, by means of the model engine which stands on the floor here. I would like to make a similar illustration—Mr. Williams' illustration, however, was made with reference to the present Webster magneto, the refined result of the Kane improvement. I should like to illustrate by means of this model here, which I see bears no exhibit number, just what that convenience of removability means.

Looking at the device in the present state in which the magneto of the same type as the original Kane device, when mounted on the engine cylinder, and the frame on this model may be regarded as the cylinder wall. The push rod is actuated in this manner and tripped at the proper time to produce a suitable and satisfactory spark. Your Honor can see the effect.

When, as frequently becomes necessary, the spark plug is taken off to clean the contact points or to examine or test them, it is simply necessary to remove the nuts which hold the magneto in place, throw back the push rod which is attached to the engine and move the device like this, and you have it in your hand.

One great advantage is, one that I don't think has ever been accomplished before Mr. Kane, you can take it off and operate it just the same as if it was on the engine, see if you are able to get a spark in the cylinder, and put it back knowing when it is put back that it is going to operate in the same way. If there is a screw driver there— It is merely necessary to get in there with the screw driver and it will spark just the same. And that capacity is present in that original device to just the same extent. Mechanically it is the same. I don't think that is in condition to spark. In fact, there is no wire, no connection, but the construction is the same. I presume it is not necessary to put it back.

Mr. Williams: I will offer in evidence the demonstration apparatus last referred to by the witness and ask that it be marked as Plaintiff's Exhibit No. 47.

(Said apparatus was received in evidence and marked Plaintiff's Exhibit No. 47.)

The Witness: In view of the explanation I have just made

I desire to emphasize the fact that this is a unitary structure in which it is possible to secure and maintain the necessary exactness of synchronism between the movement of the rotor and the breaking of the electrode spark contacts, by direct engagement between the moving rotor and the outer electrode arm; and one in which it is possible to remove the device from the engine and operate it when it is so removed in the same manner as when on the engine, and replace it on the engine without disturbing all necessary physical relations.

It is a self contained device in that the driving springs which actuate the rotor are connected with the frame which is related to the rotor and there is no chance for disarrangement of that necessary physical relation when the thing is removed for inspection or testing or cleaning the contact points.

I think that states quite concisely the improvement, which Mr. Kane made as set forth in the patent in suit to which the question refers.

Q Will you describe now the applicability of the device of the Podlesak reissue patent 13,878 to a gas or gasoline engine, and explain its utility and advantages when thus applied?

A The Podlesak reissue patent 13,878 describes several improvements which may be regarded as in the nature of refinements of the device which Mr. Kane produced as set forth in the Kane patent just discussed.

One of these improvements is described in the patent as a particular relation between the springs which drive the rotor and the spring which returns the movable electrode after the contacts have been separated to make a spark. This spring relation as described is one in which the electrode spring is of less tension than the driving springs, of the magneto, and as providing an arrangement whereby the contact electrodes can be held normally separated and closed by the cocking movement of the rotor, and subsequently separate when it recoils.

Mr. Podlesak evidently saw some advantages in this phase of the improvement. Just what they were I don't know. It is not one with which we are particularly concerned.

Another phase of this improvement in this patent consisted in the provision of means additional to those by which the spark plug and igniter are fastened to the cylinder for positioning the spark plug with respect to the engine. He shows

it in the patent as Arm 12 extending to the right from the frame of the igniter plug, in Fig. 1 of the patent, the end of this rod engaging and resting between two lugs, 14, cast upon the cylinder wall; and explains that the purpose of this is to prevent angular displacement of the igniter mechanism, with respect to the push rod.

As illustrated in Fig. 4, he shows by dotted lines that if that igniter mechanism is displaced upward, as indicated by the dotted line 10, that it will throw out the entire time relation between the push rod on the engine and the igniter; in other words, it will interfere with the timing as between the engine cycle and the magneto operation. I don't know whether there is a model here showing that or not.

The Court: That is clear.

The Witness: It is clear. Your Honor understands it?

Another phase of the improvement which is set forth in this Podlesak reissue patent is that he provides a unit in what might be called the shelf construction. In other words, instead of providing that the arm which extends from the igniter plug and carries the magneto mechanism shall be as in the Kane arrangement, he forms a projection in the nature of a shelf upon which the magneto sits as upon a foundation from which it can be detached for convenience.

Now, while that may seem to be a small change, there are a great many advantages in that type of construction, particularly from the manufacturing standpoint. It provides, for example, that the magneto may be manufactured in one place and the bracket in another place, and both taken to a third place and assembled, and there are a good many advantages, advantageous results accomplished by means of this shelf type of construction. Those are the two particular things which I need to emphasize with respect to this Podlesak reissue patent.

That has the additional positioning device to insure the correct timing of the igniter mechanism with reference to the cycle of the engine. The shelf construction, and the igniter body with a frame such as to provide a platform upon which the magneto in itself may be bolted or removed.

Q Will you refer now to the Podlesak patent 1,101,956 and describe the applicability of the device of that patent on gas and gasoline engines, and explain its utility and advantages when thus applied.

A The improvement of the Podlesak patent 1,101,956 relates to means for cocking or setting the rotor of the mag-

neto by hand and independently of the motion of the engine, in order that the magneto may be tested with respect to the character of the spark conveniently when removed from the engine, or when mounted on the engine that it may be placed in its set position at which it is about to trip, and when so set held there in order that the adjustment of the push rod may be properly and conveniently made.

In other words, this is a lever device which is used as a catch for holding the rotor in proper position for tripping while at the same time the length and position of the push rod may be adjusted and set so that it will trip at just the proper time.

In addition this lever device serves as a device for starting the engine on the spark, as the expression is. Mr. Williams illustrated that in his opening statement by showing 597 how the gas could be drawn in, the engine then reversed to compress the gas, and then by pressing the lever by hand create an initial explosion and start the engine off without cranking.

This device is illustrated in the drawing of the patent and consists of a combination in which by means of a lever, 5, the pin carried on the rotor yoke, shown here as pin 16, supporting one end of the right hand driving spring 13, and the anchor pin which supports that driving spring, are utilized in combination with the lever in such a manner that the lever may be moved into engagement with the rotor yoke, thereafter continuing its movement, move the rotor to the cocked position, and at that point either allowed to lock and hold the rotor in a cocked position, or by continued movement of the lever handle release it in the same manner as when on the engine, and let it fly back and make a spark.

In other words, when making a spark for testing purposes it accomplishes in an exact manner what is accomplished crudely by the use of the screw driver as I showed your Honor with respect to the early Kane device.

Possibly I can illustrate that point a little more clearly by reference to one of the Webster Company standard magnetos which represents the commercial form of this Podlesak improvement.

Q Would you, in doing that, Mr. Webster, or before you finish this answer, indicate also how in the Webster Company present commercial product, as you now have it before you, these other devices of the Kane patent and of the Podlesak reissue patent are embodied?

A I will do so. In this commercial magneto, which I think your Honor will recognize, is a development first of the original Kane improvement in the unitary assembling of it, and in the exactness of the synchronizing between the 598 spark electrodes and the rotor movement; and in the shelf construction by which this can be taken off or separately manufactured and replaced or removed as desired; and in the positioning means which additional to the bolts which fasten the igniter unit to the cylinder, has a plug extending from the igniter frame engaging a dowel pin which in actual use would be fitted to the engine cylinder.

It embodies the Kane improvement, and those two improvements of the Podlesak reissue patent to which I have called attention.

The lever device is likewise found in this commercial machine. It is mounted on one of the anchor pins for the driving spring, which is as in the drawing of the second Podlesak patent, and operates to engage the rotor yoke and to move it to the cocked position in that way.

Now, if it is desired to utilize this device for adjusting the push rod in the proper way it is left in a locked position, as I have left it, and the push rod is set so that with the engine in the proper timing position for making the spark, that is, with the engine set in such a position so as to represent the necessary advance to take care of the combustion period in the cylinder, the push rod will rest just at the edge of the trip finger, and by means of a nut or other adjustment, if it is not in proper position, its length is adjusted one way or the other until it comes to the tripping position. Following that adjustment the wedge member carried on the push rod, and which serves by engaging the roller over which the push rod rides to raise the end of the arm to trip or disengage and thus trip the rotor. That is set by means of a set screw. So that just at this point, determined by the starting lever, as we call it, of this second Podlesak patent, it gets the proper time relation. If on the other hand it is desired to use the starting lever device for starting on the spark, or with the machine removed from the cylinder, you see if the proper spark is 599 present instead of stopping the movement of the rotor as I have described, allowing that locked relation to take place, this movement is simply continuous, making the spark in just exactly the same manner, substantially in the same manner as if it was actuated by the engine.

That I think covers the improvement which is represented by this second Podlesak patent.

Mr. Williams: We offer in evidence plaintiff's commercial machine as referred to by the witness and ask that it be marked Plaintiff's Exhibit 48.

(Said device was then received in evidence and marked Plaintiff's Exhibit 48.)

Q Let me ask you now to refer to claim 3 of the Kane patent and state whether they describe the defendants' types, Type A and Type B, and if so, give the reason for your answer.

A I have carefully considered claim 3 in the patent 1280105, and believe that the defendants' devices, Types A and B, realize without question the Kane invention, or the Kane improvement, as described in claim 3, regarding it, of course, as an engineering description of a structure.

My reasons for this conclusion can, of course, be best shown by pointing out wherein the description of the claim is met in the physical device.

I will endeavor at the same time to refer to a chart or drawing of this device in order to indicate the parts of the physical device with reference characters so that the record will read intelligently.

The chart to which I now refer is entitled "Defendants' Device, Type A, front diagram," and is a diagram illustrating the complete assembly of the Type A unit of which the bracket, defendants' machine, Type A, forms a part. This bracket corresponds to the diagram to the extent that it has the body portion and the shelf portion of the igniter unit 600 which in the diagram are lettered respectively A & B.

As your Honor will see, the diagram shows the magneto position on the shelf in the proper relation.

Referring now to claim 3, the device illustrated by this diagram has the field magnet, F. The field magnet is indicated at F. The inductor is indicated at Y in diagrammatic cross-section, and it is in position to oscillate within the field of force of the magneto. There are a pair of main actuating springs lettered H, H, on the diagram and carried on the bracket exhibit to which I have referred. The rotor of which the inductor forms a part also comprises the yoke member indicated diagrammatically at Y, and found on the bracket in the physical exhibit. This yoke, the inductor, and the shaft indicated at V in the diagram, are in the completely assembled device in practically rigid relation; that is, they

have an angular relation which remains unchanged during the operation of the device; and that is rigidly maintained by reason of the cast iron frame to which the magneto and the yoke parts of the rotor are respectively secured, the idea being to maintain a rigid angular relation such that when the rotor recoils and strikes the electrode arm it will strike at just the proper instant, and synchronize with the current waves set up in the winding by the movement of the inductor.

Continuing with the claim, the main actuating springs are connected at their free ends with the yoke member as shown in the diagram, by means of the pins, G.

The rotor also includes what I have called the trip finger, but which in the claim is referred to as an operating arm. This is the finger projecting at the side of the yoke lettered T in the diagram and correspondingly found in the physical device. This operating arm is a part of the yoke member in both cases, and in this case integral with it, and is adapted to be engaged by the push rod moved by the engine. In this 601 case the push rod has a convertible movement and strikes the trip finger on the under side vertically instead of horizontally as in the other device that I have explained.

The igniter unit further comprises separate or separable contact points within the combustion chamber and these are illustrated diagrammatically in dotted lines at M and O of the diagram and are found in a similar manner in the physical device.

There is also a light spring which serves to maintain these electrical contacts, or contact points closed, that is, in electrical contact. This light spring in the physical device is a helical spring which holds the movable electrode and serves to restore it to normal position with the contacts in engagement or in position to be engaged by the striker arm of the rotor after each operation.

The device further includes mechanism which may be regarded as possibly to permit the electrode, and the electrode stem extending to within the cylinder of the engine which is adapted to be engaged by a cam surface on the yoke member. These parts are shown on the diagram at E as the electrode arm, and at N as the electrode stem.

The curved cam surface which serves to engage this mechanism, to move the electrodes to form the spark is illustrated at—in this claim it is not described as a curved surface, but merely as a cam surface, and this is found in the diagram in the upper surface of what we call the striker arm

rigidly related to or forming a part of the yoke member. This is the striker arm, S, which engages by its upper surface the adjustment screw extending through the electrode arm, E. The construction is similar in the physical device. As required by the claim, the striking of that cam surface, or striker arm, causes the separation of the contacts within the cylinder, against the tension of the light helical frame to cause the spark.

602 The claim is similarly realized in the Type B device.

Referring to the physical device marked Plaintiff's Exhibit Defendants' Machine Type B, it will be seen that the arrangement of the magneto and its relation to the bracket and yoke member and driving springs is substantially the same as in the device I have just described, and I have here the push rod that is used in connection with this.

In order to make this a little more clear, I will refer to this perspective side view of the physical device which I have just referred to, which view or chart is entitled, 'Defendants' Device Type B, Side Perspective.'

Now, I don't know that it is necessary that I should go through the claim in detail with respect to that device. I would like to point out, however, with reference to the diagrammatic chart of the same device to which I now refer, entitled 'Defendants' Device Type B,' with the yoke forming part of the rotor indicated here in the diagram as Y, carrying a rather differently formed striker arm—as shown on this diagram it is a curved projection, S, which engaged the mechanism including the electrode arm, E, and the electrode stem, N, to separate the contacts, M, within the engine cylinder to form the spark.

This device, as your Honor will note, is cocked in a clockwise direction rather than in contra clockwise direction as in the Type A device, and the description of the claim applies to this device just in the same way as the one I have just made reference to.

Q While you have that Type B device and diagram before you, will you answer the same question as to claim 2 of the Kane patent and as applied to this Type B device?

A Claim 2 of the Kane patent reads much the same as claim 3, in that it describes the unit as a device calling for a 603 suitable field magnet and an inductor adapted for oscillating within the field of the field magnet, and a yoke rigidly connected for oscillation with the inductor and thus forming the rotor with the shaft which engages the yoke of the

inductor forming the rotor mechanism, and having projections at diametrically opposite points for supporting the driving springs as shown in the diagram at H, H, the projections being G, G, as previously pointed out on the other machine, and these driving springs supported on a stationary projection here which is integral with the frame to which the magneto is operated and the other stationary projection being similarly secured. As will be evident, these actuating springs tend to return the oscillating rotor to its normal position after the device has been tripped by the push rod.

The light spring is a helical spring, as I have already pointed out. The push finger is a rod with a curved end at one end and at the other to which I have previously referred to is formed the actuating device. The yoke has, as I have pointed out, the curved cam surface for which the claim calls, this being the curved projection S in the diagram, found correspondingly in the physical device; and the surface of this projection engages what is here called the push finger in the claim, but which I have referred to, for the sake of uniformity as the electrode arm on the overthrow of the yoke when returned to its normal position, and as called for by the claim there is the operating arm associated with the yoke, which is the projection which I have referred to as the trip finger, and the reciprocating mechanism called for by the claim, being driven by the engine, is what I have called the push finger, or push rod engaging the trip finger to swing the yoke, and the inductor, that is, the rotor, out of its normal position as called for by the claim, and releasing it at the proper point.

(Recess.)

Before concluding this answer, I wish to refer briefly 604 to the 1915 bulletin marked Plaintiff's Exhibit 41. On pages 38 and 39 of this bulletin are illustrations of the Sumter Type A igniter, referred to in this answer.

Figure 1 of this bulletin, page 38, shows a side view of the device, looking from the right, while Fig. 4, page 39, shows a side view, looking at the left. Figures 2 and 3 are front views, one with the magneto in the place upon the igniter frame; and Fig. 2 shows the same device, or the frame of the device, including the yoke portion of the rotor, with the magneto removed. The chart, Defendants' Device Type B, Front Diagram, is a diagram which in a measure combines figures 2 and 3 of this bulletin.

Q Just a moment. Do I understand that that bulletin (indicating)—

A No, I am in error. I should have referred to the other chart, entitled Defendants' Device Type A, Front Diagram, as being a diagram showing the relation of the parts corresponding to Figures 2 and 3 of this 1915 bulletin. I would also point out that the physical device Plaintiff's Exhibit Defendants' Machine Type A, consisting of the igniter body, and shelf, and the yoke portion of the rotor, is substantially the same as is illustrated in Fig. 2 of the bulletin. I also desire to compare this device Plaintiff's Exhibit Defendants' Machine Type A, bracket, with the bracket portion of the Kane device, marked Plaintiff's Exhibit No. 14, for the purpose merely of pointing out that the bracket and igniter body, portions of these devices, bear a corresponding relation to the complete igniter.

Q Will you please refer now to Claims 7 and 8 of this Kane patent, and state whether they describe the Defendants' device Type C, and if so, explain the reasons for your answer.

A Yes. It is my understanding that both Claim 7 and Claim 8 of this Kane patent, No. 1,280,105, described the Type C, device of the defendant. My reasons for this conclusion may be explained by reference to the physical device in
605 connection with a diagrammatic chart which I have had made of the device.

(Witness produces chart.)

This chart is entitled Defendants' Device Type C, Front Diagram, and shows in diagrammatic relation the cooperating parts of the magneto, and frame, and electrodes, as they exist in the actual device.

Referring first to the chart, it will be seen that whereas in the Type A and Type B device the yoke portion of the rotor, carrying the striker arm, is in exact axial relation with the shaft upon which the armature of the magneto is mounted, in the Type C device the yoke or striker portion of the rotor rotates about an axis somewhat displaced with respect to the axis of the armature. This can be readily seen, also by reference to the published pictures or views of the Sumter Company.

It will be seen that in the Type B device the rotor portion of the yoke is connected, or, the yoke portion of the rotor, I should say, is connected with the inductor or armature of the magneto by means of a forked connection or coupling, the two being in exact axial relation, that is, they both rotate about the same axis.

As compared with this arrangement, the type C device positions the axis of the yoke or striker portion of the rotor off at one side, with respect to the axis of the armature portion of the rotor. This can best be seen by reference to the chart, which shows the armature C rotating about a point directly centered between the pole pieces D D of the magneto, whereas the striker portion of the rotor rotates around an axis V to the left of the axis of the armature, so that while the two parts are maintained in definite relation, by means of a forked connection, Z, and whereas the relation between the angle of the armature and the time of the engagement of the striker arm S with the electrode arm E remains fixed and constant, inherently synchronized, as it were,—the arrangement is somewhat different from that in the Defendants' Type B, as I have explained.

With this explanation, I will point out that the Type C device is, as called for by claim 7, an electrical ignition device for an internal combustion engine, in which is combined a magneto generator, comprising as the claims says, rotor, stator, and generating winding.

In the Type C device the stator is, of course, the field magnets and frame and pole pieces, lettered respectively F; and the frame perhaps would include the shelf B; and the pole pieces D. The rotor includes the armature C, the shaft upon which it rotates, the rotating striker arm S, rotating about a center pin V, with the mechanical connection between them, including the pin G and the fork Z, the generating winding being the winding about the armature, marked W.

Continuing, the claim calls for a pair of relatively movable make and break spark electrodes, which are found in this device, just as in the types A and B, which I have previously considered.

The spring means found in this device (indicating) in a helical spring, wound about the shaft, upon which the striker portion S of the rotor moves; that is the spring, helical in form, which is seen without the housing portion of the electrical device, encircling the shaft or pin about which the striker arm moves, and serving to, as the claim says, normally hold the rotor, that is, this rotating system, in a certain position, that position, as I understand it, being the proper position for its engagement by the push rod of the engine.

The claim calls, also, for mechanism whereby the movement of the rotor effects the separation of said electrodes; and that mechanism, as I take it, may include the electrode arm

E, on the diagram, the electrode stem, N on the diagram, and possibly the arm M, which carries the movable contact piece.

607 The remaining description of the claim points out that all of these parts, to which I have previously referred, are mounted upon a rigid unitary and integral support, that being the bracket or frame of the device, which includes the shelf portion B, the body portion A, and the frame of the structure which serves to support these previously named parts in the definite timed or synchronized relation necessary for securing the best spark at the instant the electrodes are separated. The function of that frame is just the same as in the other devices, to co-ordinate these different elements into the proper synchronized relation, and, furthermore, to produce in combination a structure whereby all of these previously named parts may be removed from and returned to their position on the engine cylinder, as I have previously made clear with respect to devices A and B, without disturbing their relation to each other.

And the claim continues, by reciting, conductors, for carrying the electric current from the generating winding to the electrodes.

That is indicated here on the diagram by the dotted line W, by which the circuit connection comes from one end of the winding, through a wire to the insulated stationary electrode O, the other side of the circuit being traced from the other end of the winding to the frame of the device, and thence through the metal to the movable electrode, which is in direct contact with the frame.

The winding of the machine is thus normally in a short-circuited condition up to the time that the electrodes are separated to make the spark.

The concluding element of the claim is described as, Engine driven means adapted to oscillate said rotor against the action of said spring means, and then to release it,—that being the push rod, which engages the trip finger.

In this case, the trip finger is shown at T on the diagram (indicating); the push rod being the part, P, lying
608 behind the magneto, and engaging the trip finger at the point T, and subsequently releasing it at the proper instant, to make the spark at the proper time. It corresponds to the short rod, with a curved piece at one end, and a pivot at the other, that I have had here previously with the other two types of machines.

Q The question was to answer as to the three types, A, B and C.

A Yes.

Q I do not know whether you—

A I was going to consider claim 8; but your question directed me only to C, as I recall. Do you wish me to consider the other two types first?

Q Well, take it up in the order you please. The question that I asked, or meant to ask, was to consider Claims 7 and 8, with respect to three types, A, B and C. You have made some allusion to B, at least, as you have proceeded, but, if not sufficiently fully, I would like to have that matter covered.

A Well, I will by means of the chart briefly point out where these corresponding elements are found in the corresponding types A and B, if that seems desirable.

Referring to Type A, in connection with Claim 7, the rotor of the devices comprises the shaft, the armature upon which it is mounted, the yoke Y on the diagram, and post or striker arm, which is part of the yoke. The stator of course is the stationary portion of the magneto, as compared with the rotary portion, which I have just described. The generating winding, as shown in dotted lines in the diagram, is wound about the web of the armature.

The make and break spark electrodes are the electrodes extending within the cylinder, through the body portion of the magneto, and indicated on the diagram, Defendants' Device Type A, front diagram, by the dotted lines at M and O.

The spring means which hold the rotor in a certain position is in this case the pair of springs H, H, which are 609 located radially with the respect to the rotor (indicating on diagram) and serve to normally hold the rotor in position for proper engagement of trip finger T, by the push rod of the engine. And the mechanism by means of which the movement of the rotor effects the separation of the electrodes would include the electrode arm E, and possibly the screw which forms an anvil for the striker arm S to strike against to give the hammer blow which is necessary to rapidly separate the contact at O to make a satisfactory spark.

It will be apparent from what has already been said that the frame of the device is a rigid, unitary and integral support, and that all of these parts I have just mentioned are mounted upon that support, in such relation that they may be removed from the engine, inspected, and returned to the

engine without disturbing their relation to each other, for satisfactory operation.

The conductor for carrying the electric current extends in this case just as in the case of type C device, from one end of the armature winding, as indicated by the dotted line '7' to the stationary insulated electrode L, the other end of the winding being connected to the movable electrode N, and thus to the frame of the machine through the support for the device.

With reference to Type B, these same devices, rotor, stator, generating, winding, make and break spark electrodes, spring means for holding the rotor in a certain position, and the means whereby the movement of the rotor effects a separation of the electrodes at the necessary predetermined point of the movement of the rotor, are all found in substantially the same manner as in the Type A device, as is apparent from the diagram. I do not think I need to go over those in detail (indicating).

And similarly, the action of the armature to the electrodes is traced by means of the wire '7,' as in the case of the preceding device; and engine driven means for operating the 610 rotor is the push rod P, as before, and just as in the

Type A device; all of which parts first referred to are mounted upon a rigid, unitary and integral support, for preserving that relation, that operative relation required for the successful operation during the removal and replacement of the unit upon the engine.

Turning now to Claim 8, this claim is in the same language as Claim 7, up to the point at which the supporting member is mentioned, and it seems unnecessary to go over that in detail.

The claim calls for a supporting member, upon the several parts of which all of the aforesaid mechanism is mounted, and having a single integral part adapted to be attached to the engine.

In the case of the Type B device, this supporting member is the frame, including the shelf portion B, and the body portion A, upon which the several parts of the device are mounted and held in relation; and the same is true with respect to the Type A device, as illustrated in the diagram, which I have previously referred to; and this is likewise true of the Type C device, as is illustrated in that diagram. If your Honor desires, I can refer to those directly.

The Court: No. It is not necessary.

A The claim goes on to point out that by means of this supporting member all of the mechanism referred to may be removed from the engine by removing said single, integral part; and that I take it refers to the fact that it has a single point of attachment to the engine, where, by unloosening the single fastening means, as a pair of bolts or a clamp, the device can be taken off as a whole.

And this is true of the devices A, B and C, which I have been considering, the purpose of this being that these parts referred to may be removed from and returned to the engine with unchanged relations between any and all of the parts of the mechanism, thereby insuring the predetermined synchronism and inter-related adjustment of the mechanism when 611 it is replaced on the engine, which I have pointed out as one of the prime advantages of this unitary device.

And, as in Claim 8, the claim likewise brings in the engine driven means adapted to oscillate the rotor, which is the push rod moved by the engine, and this relation, and result to which the claim refers, is found in all three of these devices, as will be apparent from what has been said.

Mr. Williams: I would like to offer in evidence now some of the diagrams and charts that the witness has referred to. I will ask that they be marked as follows:

The diagram of Defendants' Device Type A, as Plaintiff's Exhibit 49.

The diagram of Defendants' Device Type B, as Plaintiff's Exhibit 50.

The diagram of Defendants' Device Type C, as Plaintiff's Exhibit 51.

The diagram of Defendants' Device, Type B, Side Perspective, as Plaintiff's Exhibit No. 52.

The circulars illustrating the Defendants' Device Type B, as Plaintiff's Exhibits 53 and 53-A, respectively.

The circular illustrating the Defendants' Device Type C, as Plaintiff's Exhibit 54.

The diagram marked 'engine cycle' as Plaintiff's Exhibit 55.

(The said documents were thereupon admitted in evidence, and marked respectively as Plaintiff's Exhibits 49 to 55, inclusive, the same being respectively in the words and figures following:)

Mr. Williams: Q Will you please now refer to Claims 1, 2, 3, 7, 8 and 9 of Podlesak Re-issue Patent No. 13,878, and state whether they describe Defendants' Device of Type A,

and if so, select a typical claim, and explain the reason for your answer, by reference to that typical claim.

A Claims 1, 2, 3, 7, 8 and 9 relate to that feature of 612 improvement which I have previously explained as the provision of positioning means other than the regular fastening means of the igniter, for securing exact positioning of the igniter with respect to the engine cylinder, in order that the device may be maintained in proper timed relation with the cycle of the engine.

I can explain the presence of this improvement in the Defendants' Type A device, best, possibly, by reference to a photographic enlargement, which was made, of Fig. 1, found on page 38 of the 1915 bulletin, Defendants' Exhibit 41, and also by reference to the physical device, Plaintiff's Exhibit Defendants' machine Type A, which comprises the bracket and yoke portion of the device.

While the photograph is being located, I will say that this improvement, as found in the Type A device, consists in the provision of what may be called a dowel pin, fixed in the engine cylinder, in position to engage a co-operating hole in the body portion of the igniter frame. This is the hole (indicating), found in the physical device just referred to, positioned almost entirely below the axis about which the yoke portion rotates. This hole to which I point, when the bracket is put on the cylinder of the engine, is engaged by a dowel pin, to prevent angular displacement of the device with respect to the engine, and bearing in mind that this is attached to the engine by means of a bracket clamped against the base of the igniter plug, and held in place by a machine bolt; it serves to prevent what otherwise might be an angular displacement, such as to interfere with or prevent operation of the device with respect to the engine cycle, and with respect to the time of tripping.

This dowel pin arrangement is or should be illustrated in one of the photographs which I have asked for; and if your Honor can get the light on that, in the right position, you will see, indicated in red, by dotted lines, the place where that dowel pin is found (indicating). Do you see it?

The Court: Yes.

613 Here ensued a discussion between counsel with respect to the answer of plaintiff to defendants' interrogatories, regarding the claims of the several patents in suit upon which the plaintiff relied, with the result that plaintiff's counsel

stated that plaintiff relied upon claims 1, 2, 3, 7, 8, 9, 15, 21 and 22 of the Podlesak reissued patent; claims 2, 3, 7 and 8 of the Kane patent; and claims 1, 2, 3, 6, 11 and 12 of the Podlesak patent No. 1,109,156.

Witness then continued his answer as follows:

"Upon this photograph, which is entitled 'Defendants' Device Type A, Right Side,' I have drawn a lead line, and the reference character '9,' to indicate just where the position of that dowel pin is shown, in red ink. It is a little difficult to see, unless you get the light just right, because of the black background against which it appears.

Referring to Claim 1 of the Re-issue patent, 13,878, I am proposing to—

The Court: It is plain enough now, that I get the outline of it. (Indicating.)

The Witness: Just get the light right. I can point out my understanding of the manner in which this claim describes the device best, probably by reference to this photograph.

(The witness referred to a photograph, and indicated.)

If your Honor will let me have the photograph, I will just make my comparison briefly by means of that. The claim calls for the combination of an engine cylinder, a make and break igniter,—which would include the spark electrodes L and M, on the photograph,—an electric generator, which is indicated generally by the character F, having its movable element operatively connected with the movable element of the igniter. That operative relation, as I understand it, 614 is that whereby the striker arm on the rotor engages the arm of the electrode.

For example, referring to the large chart of the Type A device, Plaintiff's Exhibit 49, that is the engaging member of striker S, which engages the electrode arm E (indicating). That I understand to be the operative connection to which the claim refers.

The actuator, called for by the claim, is realized, I believe, in the engine push rod, by means of which the movable elements of the igniter and generator are operated. The igniter, as illustrated in the photograph, and in the large chart before us, is removable from the engine cylinder, as has been explained, while the actuator itself, that is, the push rod, remains connected to the engine.

And means are provided, in this dowel pin, fixed to the engine cylinder, and in the orifice in the igniter body, which is

engaged by that dowel pin, whereby— And this is a means in addition to the regular fastening means—whereby, in the language of the claim, the correct positioning of the igniter with respect to the actuator is insured, when the igniter is replaced on the engine after removal therefrom; and it further prevents the shifting of the igniter, with respect to the engine; and, as required by the claim, this latter means, that is, the dowel pin, and the portion of the igniter body which it engages, are, as is evident, parts on the engine cylinder and on the igniter which engage for the purpose described. I think the claim clearly describes the arrangement which I have explained by reference to this photograph, and which is actually found in the Type A device.

This is a typical claim, and I think the manner in which the other claims read will be evident, from what I have said.

Mr. Williams: We offer in evidence the photograph produced and referred to by the witness during his last answer, entitled 'Defendants' Device, Type A, Right Side,' and 615 ask that it be marked as Plaintiff's Exhibit No. 56.

(The said photograph was thereupon received in evidence, marked as Plaintiff's Exhibit 56.)

Mr. Williams: Q Will you please refer now to Claim 15 of this Podlesak Re-issue Patent, No. 13,878, and state whether it describes defendants' devices of Types A, B and C, and give the reasons for your answer?

A Yes. This claim, as I understand it, describes all three devices. Referring first to Type A, as illustrated in the chart, Plaintiff's Exhibit 49, the device—

The Court: Isn't that plain? Does it require a skilled witness to cover that?

Mr. Williams: I am sure it does not, in this court. Sometimes one is embarrassed later, not to have it in the record. We are trying to make it brief. I do not know that we require more there than the affirmative answer.

The Court: No, I do not think so,—an affirmative answer. The Court of Appeals never requires you to conform to that old rule of the Supreme Court, enforced in other circuits,—that they will not take anything for granted at all. If you get an affirmative answer to that question, or the different questions, covering that claim, it is enough. It is perfectly clear in the claim.

Mr. Williams: Q Let me ask you, Mr. Webster, the same question as to Claims 21 and 22 of the Podlesak patent,—and those are all of the claims,—that is, that concludes the

claims of that patent to which we shall make reference especially; and in view of the fact that the element that the witness has been specially referring to in connection with Claims 1, 2, 3, 7, 8 and 9 is not found at all in Claims 15, 21 or 22, I would like, if the court is willing to have a slightly detailed answer, as to some of those claims.

616 The Court: All right.

Mr. Williams: I am not going to insist that every one be gone through. But, if you will take 21 and 22, and compare them with the Types A, B and C.

A I have compared Claims 21 and 22 with all three devices, Types A, B and C, and find that they do fairly describe each one of these devices. Referring, for example, to Claim 21, and, for purposes of illustration, to the chart Plaintiff's Exhibit 49, Defendants' Device Type A, Front Diagram, as shown in this chart the device comprises an igniter frame having a body portion indicated generally by A, carrying relatively fixed and movable electrodes, L and M (indicating on chart), mounted in the body portion, and supporting shelf or base, indicated at B as extending laterally from the body portion and integral therewith; this shelf supports the electric current generator, comprising field magnets F; and a rotor made up of the armature C, the shaft V, and the yoke portion Y, there being on this rotor an arm in the form of the striker arm S; also on this rotor portion a trip finger T, a spring tending to hold the arm of the electrode in engagement with the striker arm of the rotor, this being the helical spring Q (indicating); spring means connected with the rotor for holding the same in a predetermined position, found in the driving springs H, H. (indicating); which by reason of their slight initial strain hold the rotor in such a predetermined position that the trip finger T will be engaged, and tripped, at the proper time by the push rod of the engine; and an integral bracket; and the integral bracket to which I have previously referred, as comprising the body portion A and the shelf portion B, extending laterally therefrom, and upon which the generator is mounted.

Claim 22 is in much the same language and I think its application will be apparent from the application I have made with respect to claim 21.

Similarly, with respect to Defendants' Device Type B, in this chart (indicating) Plaintiff's Exhibit 50, the corresponding parts bear corresponding reference characters, and it

seems hardly necessary to go over these in detail. The
617 Type C device, as illustrated in the chart, Plaintiff's Exhibit 51, similarly bears reference characters, the same as for the corresponding parts in the two charts previously mentioned; and what I have already said with respect to claim 21, will, I think, make the application clear.

Q Will you please now refer to the next patent, number 1,101,956, and particularly to claims 1, 2, 3 and 6 of that patent, and state whether they describe the Defendants' Devices Types A and B, and if so, select a typical claim, and explain the reason for your answer.

A I have compared Claims 1, 2, 3 and 6 with the devices, Types A and B, to which you refer, and find that these claims fairly describe the devices referred to.

Selecting Claim 6 as a typical claim, this may be applied to Defendants' Device, Type A. By reference to the chart, Plaintiff's Exhibit 49; it will be observed that this chart shows, in dotted lines, at '8,' a lever of much the same shape as that which I used in illustrating the operation of the Plaintiff's Device, while removed from the cylinder.

I have here the lever indicated at 8 on this chart, and by reference to physical exhibit, Plaintiff's Exhibit Defendants' Machine Type A (indicating exhibit) will illustrate how it is used.

It will be seen that the hole in the lever fits on the post which anchors the upper end of the top driving spring, and that when placed in position thereon, and the upper end moved to the right, it engages with the upper post projecting from the voke portion of the rotor, and moves the same to cocked position (illustrating).

If the movement is discontinued at that point, the rotor, including the armature of the magneto, remains in that position just at which the tripping point is reached. Continued movement of the lever trips the rotor, in substantially the same manner as when on an engine, and secures the re-
618 sult of allowing observation of the spark with the device removed from the engine.

Considering the language of Claim 6, which I have selected as typical, the combination includes or comprises a current generator, including a rotor, which is indicated generally, indicated in the diagram, Plaintiff's Exhibit 49, as I have previously described; and this current generator includes the rotor comprising the armature, armature shaft, and yoke, which forms the rotating system of the device.

The actuator for moving the rotor, the crank arm connected with the rotor, to which the claim refers, is found in that portion of the yoke with which the free end or engaging end of the actuating lever engages; and one of the main driving springs is connected with this crank arm, as shown at the upper spring H in the diagram, which is connected with the upper arm of the yoke, and the pin G projecting therefrom, the anchor for the other end of the spring being the upper post, fixed to the frame of the device.

The claim describes a device mounted on the anchor for the spring, and movable into engagement with the crank arm to move the latter and place the spring under tension and release the arm for permitting the spring to quickly return the rotor.

This so-called device is the hand lever, the use of which I have illustrated by means of the physical exhibit, Plaintiff's Exhibit Defendants' Machine Type A, and which is illustrated at '8' in the chart, Plaintiff's Exhibit 49.

As I have illustrated, this lever is movable into engagement with the projection of the crank arm to which the lower end of the upper driving spring is fastened, and thereupon serves to move the crank arm, and place the spring under tension, and by continued movement to release the arm for permitting the spring to quickly return the rotor to its normal position and create the spark, and operates in this respect just exactly as is described in the patent.

619 The defendants' device Type B, is provided with a corresponding lever arm, and operates in just the same way as does the Type A.

I have here the device, Plaintiff's Exhibit Defendants' Machine Type B, and I think this same lever is of the proper size to fit on this machine. I will, by placing the lever with its hole engaging the upper anchor post, which holds the upper end of the driving spring, and moving the lower end of the lever arm into engagement with the yoke of the rotor (illustrating), it will be seen that by movement of the lever the rotor is thrown into cocked position, and then released, just as is the case in the Type A device, and the claim applies in a similar manner.

Q Will you answer the same question relative to Claims 11 and 12 of this same patent, and as applied to the defendants' devices, Types A and B?

A Claims 11 and 12 relate more particularly to the use of this device or lever in combination with the parts of the

machine, for gauging purposes, as I explained in connection with my reference to the improvement of this patent. Its use in this particular may be illustrated by the physical device, Defendants' Exhibit Defendants' Machine Type A, to which I now apply the lever (illustrating), and move by its means the rotor arm into cocked position. In this position on the engine, the position, or proper adjustment and positioning of the end of the push rod, and of the means for lifting the push rod out of engagement with the trip finger on the rotor may be adjusted in the same manner as I have previously explained in connection with this patent.

It will be seen that the lever for this reason serves as a gauge to enable proper adjustment of the actuator with respect to the trip finger.

As referred to in Claim 12, for example, we have in this device, Type A, a current generator, including a rotor, as I have described; a crank arm connected with the rotor, which is the pin projecting from the upper end of the yoke for engagement with the hand lever; a member on the arm, which is, as I take it, the post itself which is directly engaged by the free end of the lever; a spring connected with the crank arm, which is the upper driving spring of the device; a device, as the claim states, movable into engagement with the member, that is, the post on the rotor, for moving the arm, that is, the crank arm, against the tension of the driving spring, and adapted to interlock with said member in the interlocked position in which I have now placed it (illustrating), for holding the arm stationary while the rotor is in cocked position, as it now is.

And the claim further calls for a rotor actuator adapted to be adjusted with respect to the rotor, while held in cocked position by the said device, this rotor actuator being the push rod, or equivalent device, moved by the engine, to engage and subsequently trip the rotor at the proper time with respect to the cycle of the engine.

Claim 11 reads, on the Type A device, in a similar manner, and I hardly think it necessary to consider it in detail. And similarly, with respect to the Type B device. The relative position of the parts called for by the claim, and of the starting lever which co-operates with it, is substantially the same; and the claim reads upon the Type B device in substantially the same manner as I have already applied to Claim 12.

Q Without going into detail, will you say whether all of the claims to which you have been referred, that is, all of the

claims of all of these three patents, describe the plaintiff's commercial machine, as exemplified in Plaintiff's Exhibit No. 48.

A I have carefully considered all of these claims with respect to the Plaintiff's Device Exhibit 48,—not only in the size as found in this Exhibit, but in the larger size machines, which are similarly constructed, and am convinced that all of these claims read upon the plaintiff's device in substantially the same manner as upon the defendants' devices 621 which I have been asked to consider.

Q Will you look at these photographs marked 'E. J. Kane Device, Side View,' and 'E. J. Kane's Device, Top View,' and state what they illustrate, and how the device illustrated therein compares with the Plaintiff's Exhibit No. 47 herein?

A I have examined the photographs which you hand me, and understand them to be photographs of the device, Plaintiff's Exhibit 47, to which you have directed by attention.

Mr. Williams: We offer in evidence the photographs, and ask that they be marked Plaintiff's Exhibit 57 and Plaintiff's Exhibit 57-A, respectively. That is all of the direct.

(Said photographs were thereupon received in evidence, marked respectively as Plaintiff's Exhibits 57 and 57-A, and the same were and are as follows:)"

By agreement of counsel and the Court the examination of the witness Webster was here suspended to permit plaintiff to call another witness.

SIDNEY A. LOEB, called as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 32, residence, Racine, Wisconsin; occupation, secretary and treasurer of the Webster Electric Company. Connected with the company since January, 1910. Present throughout the examination of the previous witnesses. Asked to state the number of devices, or the kind referred to in this trial as having originated with the Webster Electric Company, sold by the Webster Company, both the Wisconsin and the West Virginia corporations, during the years the witness had been connected with the company, he said:

622 "Beginning with the year 1912 they were 8956; 1913, 11450; 1914, 11458; 1915, 46444; 1916, 91445; 1917, 106,773; 1918, 129,785."

Asked to state, year by year, the amount of royalties which had been earned and paid under the contract of February 5, 1914, in evidence, the witness said:

"Beginning with 1914, \$4854.15; 1915, \$9701.89; 1916, \$19,102.51; 1917, \$22,331.69; 1918, \$26,877.38."

Asked to state also, the royalty payments made to the Podlesaks under the previous royalty contract of November 2, 1908, witness said:

"Beginning with 1910, \$1547.18; 1911, \$2998.02; 1912, \$3345.29; 1913, \$4661.31."

Witness further testified that up to and including the year 1913 practically the entire business of the plaintiff was with the International Harvester Company, but that with each succeeding year thereafter the customers had increased until the majority of the engine manufacturers in the United States were using Webster ignition.

Witness further testified, against objection by defendants' counsel, overruled by the Court, that plaintiff paid the expenses of the suit commenced by plaintiff against the Sumter Electrical Company of Charleston, South Carolina.

The witness further testified, against the objection of defendants' counsel, overruled by the Court, that the witness was familiar with the suit commenced by the Webster Electric Company, or at its instance, against the Alamo Manufacturing Company, in the Eastern District of Michigan, Southern Division, entitled Emil Podlesak and Henry J. Podlesak, and the Webster Electric Company, plaintiff's versus Alamo Manufacturing Company, defendant, Equity No. 112, on reissue letters patent No. 13,878, which suit was commenced early in the year 1915, and that the Webster Electric
623 Company met all of the expenses of that litigation on the plaintiff's side of the case.

No cross-examination.

A. C. KLECKNER, having been recalled as a witness, further testified as follows:

Direct Examination by Mr. Williams.

Webster Electric Company now has on its engineering records between 350 and 400 different types and designs of igniter plug supporting brackets. The number of active brackets being probably 100. Identified catalogue of the Webster Tripolar Oscillator, recently published, which was offered in evidence as Plaintiff's Exhibit 58. Webster Electric Company manufactures six different sizes of the magneto equipment referred to, being types M, K, L, JZ, JY and PY, all shown in catalogue Exhibit No. 58. Witness states that he was to a very large extent, familiar with the condition relating to stationary and portable gas and gasoline engines and estimated that 80 per cent of the single cylinder stationary and portable gas or gasoline engines, sold in this country are equipped with plaintiff's magneto apparatus. Of the remaining 20 per cent, 10 per cent were equipped with jump spark ignition and the remaining 10 per cent with battery ignition. According to the information of the witness, he having testified that his business made it necessary to know the facts in this connection, oscillating magnetos were used in connection with gas or gasoline engines in this country to a very limited extent prior to the advent of the Kane equipment in 1909, as this witness heard it described at this trial. Witness thought that not over 5 per cent of all of the engines manufactured in this country were equipped at that time with oscillator magnetos of any kind. Witness was nineteen years old at the time he entered the employ of the Webster Company in 1909.

Plaintiff's counsel offered in evidence certified copies of certain pleadings and papers in the case of Emil Podlesak,

Henry J. Podlesak and Webster Electric Company versus 624
sus Alamo Manufacturing Company, in Equity No. 112,
in the District Court of the United States for the Eastern
District of Michigan, Southern Division, and the same were
marked Plaintiff's Exhibit 59.

Objected to, received subject to objection.

Plaintiff's counsel offered in evidence as Plaintiff's Exhibit 60, two telegrams and two letters sent by Sumter Electrical Company and Splittorf Electrical Company, respectively, to

plaintiff's counsel, Mr. Williams, the identity and authenticity of the letters and telegrams being admitted by defendants' counsel.

Counsel for the defendant Emil Podlesak objected to the introduction of Plaintiff's Exhibits 59 and 60 as irrelevant and immaterial with respect to said defendant. Objection overruled.

Plaintiff's counsel offered in evidence as Plaintiff's Exhibit 61, a letter dated August 10, 1915 purporting to have been written by Mr. Manning of the Chicago branch of the Sumter Electrical Company to Mr. Vandeventer, defendants' counsel admitting, subject to verification, the identity of the letter.

Plaintiff's counsel inquired if defendants' counsel would stipulate that Mr. Vandeventer conferred with Mr. Schley, attorney of record for the defendant in the Alamo suit, and assisted him in preparing the defense of that suit. Defendants' counsel declined to so stipulate, whereupon

H. R. VANDEVENTER, having been recalled as a witness, testified as follows:

Direct Examination by Mr. Williams.

Witness met Mr. Schley. Did not think he knew who he was at the time witness met him, but was not sure. Schley came to the witness to inquire relative to the prior art which might have a bearing upon the Podlesak reissue patent No. 13,878 which was involved in the Alamo suit, and witness gave him such information as he could that would be of aid to the defendant in defending an infringement suit based upon that patent. The conference of the witness with Mr. Schley was shortly prior to August, 1915, before witness had had any negotiations or discussion with the Podlesaks looking toward the consummation of the contract of September 4, 1915.

Cross-Examination by Mr. Bulkley.

Q Did you know when Mr. Schley came to you and talked about the prior art, anything about his being attorney for the defendant, the Alamo Company, in that lawsuit that has been referred to?

A. No, sir, I don't think I did. Mr. Schley came into my office and told me who he was, and if I remember correctly he told me that the Podlesaks were suing the Alamo Company and wanted to get what information I had relating to the prior art in this line of work, and I talked with him and I believe wrote him a letter embodying the substance of my conversation, and he departed and I have not seen him since.

The Court: Is that all there was to it?

A. Yes, sir.

The Court: The Podlesaks were complainants in that suit, were they?

A. I believe so; yes, sir.

Mr. Williams: The Podlesaks and the Webster Electric Company?

The Court: Yes.

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February 3, 1919.

Hearing Resumed.

Plaintiff's counsel offered in evidence as Plaintiff's Exhibit 62 the Cut-Away engine referred to in the direct examination of the witness, H. G. Webster. Thereupon said witness resumed the stand and was tendered for cross-examination.

Cross-Examination by Mr. Peaks.

"Q Is there anything about this art, or otherwise, that you think would be helpful to the court for you to tell, that you have not already told?

(Objection—overruled.)

A I hardly know how to answer the question.

Mr. Peaks: Very well. That is all.

Mr. Bulkley: No further cross-examination."

Here ensued a long discussion between counsel and with the Court regarding plaintiff's Exhibit No. 61 being a letter purporting to have been written by Mr. Manning to Mr. Vandeventer under date of August 10, 1915 and concerning which a stipulation previously appeared of record. Defendants' counsel stated that insofar as the previous stipulation admitted that the letter had been received by Mr. Vandeventer it was inadvertently made, the fact being that while the letter was written by Mr. Manning and was received at the office of the Sumter Company, it never reached Mr. Vandeventer. Defendants' counsel further stated that Mr. Manning and

Mr. Vandeventer were present and might be called by plaintiff's counsel and examined without being bound by what they said.

"The Court: If the admission was made inadvertently, it may be withdrawn.

Mr. Peaks: Absolutely. Now, we admit, deliberately, and will be bound by it, that the letter was sent, and was received at the Sumter office, but Mr. Vandeventer, personally, to whom it was addressed, never got it, and he will so testify. You can call him, if you like, without being bound by what he says."

Thereupon F. C. MANNING, being called as a witness, on behalf of the plaintiff, testified as follows:

Direct Examination by Mr. Williams.

"Q Will you state your name, age, residence and occupation?
* * * * *

A F. C. Manning. Residence, South Orange, New Jersey. General sales manager Splitdorf Electrical Company. Age, 48.
* * * * *

Q What was your business connection on August 10, 1915?

A I was sales manager of the Sumter Electrical Company of South Carolina.

Q Were you an officer of that corporation?

A Yes, sir, I was Vice President.

Q You have heard read this letter of August 10, 1915?

A Yes, sir.

Q This letter reads in part "Although I am terribly rushed today, trying to get things in shape to leave for Nebraska tonight, H. J. Podlesak dropped in." Did Podlesak drop in, as stated in this letter?

A Yes, sir.

Q When was that?

A The letter states, I believe, when it was. I could not tell you more than the letter says. I take it that he dropped in just previous to my having dictated this letter.
* * * * *

Q This letter was written, I understand, on August 10, 1915, was it not?

(Objection and discussion, no answer to question. 628 Defendants' counsel admitted that the letter was written and mailed on date mentioned.)

"Q. Now, in view of the fact that this letter was written on August 10, 1915, can you state, either as a matter of your independent recollection, or as a matter of record made by you in this letter, when it was that you talked with H. J. Podlesak?

Objection—overruled.

A No, sir.

The Court: Do you know? Do you recollect?

A I surmise, again, that it was on—

The Court: No. Do you recollect talking to him, any time?

A Yes, sir.

The Court: But you do not know when?

A No, sir.

Mr. Williams: Q This letter reads: 'H. J. Podlesak dropped in, and gave me a chance to find out what he knew about Webster's latest move.' Now, who was referred to in that letter by 'Webster'?

Mr. Peaks: We will admit that it was the predecessor of the plaintiff corporation.

Mr. Williams: All right.

Q Now, what was the latest move, Mr. Manning, that is referred to in that letter? What did you mean when you wrote that?

(Objection—overruled.)

A There was a move that was made at Newark, when you and Mr. Brown went down to Newark and told the General Manager of the Splitdorf Company that you had certain patents that would dominate the Dixie high tension magneto principle, and that you were going to push, or sue them for infringement, or something of the sort, if they did not 629 insist on my getting out of this stationary engine field up here, to which the Webster Company were developing some business, in connection with their Webster oscillator; and I did not like the idea of feeling that I should be ejected from that field, when I knew I had a perfect right

to work in it, and I had spent a good many more years than anybody else in the stationary engine ignition field, in developing magneto ignition for those engines, and I did not see what right you would have in going down there and making a threat like that, with Mr. Curtis, and trying to throw me out of this stationary engine ignition field, when we had certainly, as I understood, a perfect right to sell and manufacture and prosecute all the business we could in that particular line.

Mr. Williams: Q Now, what transpired there at Newark between Curtis—

Mr. Peaks: Perhaps, before we forget it, I would like to know what Mr. Brown is referred to by the witness, when he says: 'You and Mr. Brown.'

A The Mr. Brown, the gentleman sitting there (indicating).

Q You mean Walter Brown, the General Manager of the Webster Electric Company?

A Of the Webster Electric Company, yes, sir.

Mr. Peaks: All right.

Mr. Williams: Q Now, this conference between Mr. Brown and myself and Mr. Curtis was one at which you were not present?

A No, sir.

Q Was it not?

A I was not.

Mr. Williams: Q Now, where, in this letter, reference is made to Webster agents, and Webster Company, and so on, those references, I take it, are all to the plaintiff corporation here, are they not?

630 (Objection—overruled.)

A I do not know anything as to the details of the history of the organization. What I mean, by reference to the business that Mr. Brown was representing.

The Court: The question is, with whom? Who did you mean by 'Webster people'?

A The Webster Electrical Company.

Q The people who brought this suit?

A It was the company who was manufacturing the Webster oscillator.

Mr. Williams: Q This letter goes on to say that Podlesak had just come from Champlain, Illinois, where they had

been holding a tractor meet, and said one of the Webster agents, he understood, had told him there was a deal on between Webster and Sumter, and that Webster was going to take over Sumter, or vice versa. Did Podlesak say that or substantially that, to you?

A Well, I do not remember now.

Mr. Williams: Q Was the contents of this letter of August 10, 1915 true, at the time you wrote it?

(Objection—overruled.)

A Yes; I never wrote anything that I did not think was true, in my life, that I know of. Whether they were or not, I do not know.

The Court: But you suppose it to be true?

A I supposed that it was the truth, to be true.

Q I am not asking you, Mr. Manning, as to whether Podlesak told you the truth. What I am asking you is whether Podlesak said to you the things that you have quoted him in this letter as having said to you? Did he say those things?

A Well, I am sure he must have told me substantially that, or something to have created the impression of just what I have written here.

Q Now, when, as this letter says, Podlesak said to you that someone had also told him that Williams, Brown, 631 Mr. Webster and a Mr. Becker, were all in New York, and so on, whom did you understand to be referred to as Williams?

A Yourself.

Q And whom as Brown?

A Mr. Walter Brown, of the Webster Company.

Q You mean Mr. Brown who was at that time an officer or the General Manager of this Webster Electric Company to which you have referred?

A I do not know what his official—

Q Well, he was the Brown connected with the Webster Electric Company?

A Yes, sir.

Q And what Mr. Webster was referred to there, as you understood it from Podlesak?

A A Mr. Webster, of the Webster Electric Company. I did not know Mr. Webster.

Q And how as to Mr. Becker?

A Just as it stands. I did not know the gentleman, at all.

Q Did Podlesak say to you that Becker was in some way connected with or representing the Webster Company?

A I could not say.

Q Now, this letter reads in part as follows: 'He says it is the old Varley idea which has been modified to some extent by the original Webster Company's engineer, one Milton, the exploits of whom nearly wrecked the old Webster Manufacturing Company.' Did Podlesak say to you in substance that the exploits of Milton nearly wrecked the old Webster Manufacturing Company?

Mr. Peaks: I object.

The Court: You may answer.

A I do not remember any of the details of that conversation, but I wrote this letter, I am sure, and I must have gotten some such impression as that.

632 Mr. Peaks: I move to strike out the last part of his answer, that he must have got—

The Court: It may stand.

Mr. Peaks: Exception.

Mr. Williams: Q Was it upon your own initiative, and as a matter of your own information, independent of what Podlesak may have told you, at the time of this conference just detailed in this letter, that you wrote that it was the exploits of Milton which nearly wrecked the old Webster Manufacturing Company?

(Objection—overruled.)

A I do not remember. I do not remember that—the fact of the business is, you will have to excuse me, but I was reading something here when you asked that question.

Q Well, the point in question is, whether the matter of these exploits of Milton, to which reference is made in this letter, was a matter which Podlesak had told you of, or a matter of which you knew, and which you of your own initiative, and independent of what Podlesak said, incorporated in this letter.

(Objection—overruled.)

A Well, I did not know anything of Mr. Milton's history at all.

Q So what this letter says relative to Milton is something that you got from Podlesak's conversation with you?

A Evidently.

Q Did Podlesak tell you that under the final adjustment between the Podlesaks and the Webster Company Podlesak's royalties were to be not less than \$5,000 per year, and that they would run to \$12,000 for the year referred to in the letter?

(Objection—overruled.)

A I do not remember that part of the conversation, at all, but I see what is stated here. That is all I know about it.

Q Where this letter refers to 'H. J.', did you mean
633 by that to refer in each instance to Podlesak?

A Yes, sir.

Q Henry Podlesak?

A Yes, sir.

Q Did Podlesak say to you, as stated in this letter, that 'The old Webster Company's experience with Milton's high tension machine cost them many thousand dollars, and that if they have any idea of reviving this machine, it will soon break the present company'?

A I do not remember the conversation in detail, at all; but I wrote this letter, and evidently got that impression.

(Objection—overruled.)

Q This letter refers, a little later, to Clement. To whom did you refer as Clement?

A He was a lawyer in Washington, D. C.

Q Whose lawyer was he?

A The Sumter Electrical Company's lawyer.

Q Now, in this letter you said, 'I think I have scared H. J. pretty well out of the idea of manufacturing his own new machine.' What machine was referred to there?

A He showed me an oscillating magneto, on which there was a magneto, and he called it 'Sylvan,' I think; and he said that that was the machine that he and his brother were preparing to manufacture, and I was very anxious to eliminate that additional competition in that field, and as Mr. Podlesak told me that he was making arrangements to go into the manufacture of this line of oscillating magnetos, and as I realized that would be another competitor in that field, I was particularly anxious to get rid of the Podlesak brothers competition. Later it was agreed that they would stay out of that field entirely for a number of years.

Q Now, how did you scare Podlesak, as you say?
Mr. Peaks: I object.

The Court: He may answer.

634 A Well, I told him a good deal of the Sumter organization, and our ability to manufacture on an extensive scale, and that I did not think that he would be interested in bucking up against that kind of competition, and that I got the idea that he was not as much interested in going into the manufacture of these devices after he heard more of our own organization.

Mr. Williams: Q Now, what did you tell him about your own organization, or what the Sumter Company could do?

A Well, that we were a larger organization than he would be, of course, and he would be a small concern, competing with a larger, and in view of our facilities for manufacturing in larger quantities, that—

Q What—

Mr. Peaks: Let him finish.

The Court: Yes. Let him finish.

A That they would be more interested in getting rid of these devices than they would in manufacturing it themselves.

Mr. Williams: Q What did you tell Podlesak about the size or strength of the organization?

A I do not remember now any of the conversation, but I know that was the impression that I was endeavoring to create, because I wanted to keep him out of that field. As it was, there was the Webster Chicago Company, and ourselves,—the Webster Company manufacturing the Webster oscillator magneto, and the Sumter Company manufacturing the plug oscillator, as we called it; and we had the so-called Van Deventer machine, with the springs mounted on the bracket, and using a different type of magneto from the Webster machine; and I always did feel that if we could secure these rights from the Podlesaks, which I understood they had, which gave them the right to manufacture a machine similar to Webster, that, as I stated later in the letter, if Mr. Brown got too obstreperous, he wanted to
635 eject me entirely from this field, that I would then be in position to manufacture, in addition to the plug oscillator, a machine similar to the Webster, without using a different magneto,—as I think I understood from Mr. Podlesak that the Webster Company had an exclusive license on the tripolar magneto, and of course I could not see anything wrong in going ahead with those negotiations, because they

owned the patents, and they told me that their rights would be clearly set forth in the agreements which they had with the Webster Company, and which of course our lawyers could see whenever it was necessary. I had not seen any of those—

Q Now, you did not say all of that in scaring Podlesak, I presume?

Mr. Peaks: I object.

A Well, I do not think I—

The Court: He does not say that he said it. He says that he had it in mind.

A Yes; I did not tell Mr. Podlesak all that I had in mind. That was evident enough.

Mr. Williams: Q Now, what did you tell him about the strength of your organization, as you say? Did you give him facts, or something that was not facts?

Mr. Peaks: Wait a minute.

A Oh, I never tell anything that is not facts.

Mr. Peaks: Wait a minute. I move to strike that out. I object.

The Court: It is proper for him to state what he said to Podlesak, and what Podlesak said to him.

A Did I not already state that, your Honor?

The Court: Perhaps so. Read the question again, and let us see about it.

Mr. Peaks: How could it be material, what the strength of the organization was? And, if the fact is not material, what figure would it cut that the witness boasted, or bragged, to Podlesak, about it?

636 The Court: It might be quite important, as inducing Podlesak to come in with them.

Mr. Peaks: Well, if they want it on that ground, yes.

The Court: Go ahead.

Mr. Peaks: All right.

A Well, I do not remember any of the details of the conversation that I had with him, what actual words or statement that I made, but I was endeavoring to show Mr. Podlesak that three of us in that field,—there was plenty of business for two, but I did not see where there was for three.

Mr. Williams: Q Well, now, did you tell him anything about how much of that business you could do, or your Company could do?

A No, sir, I am very sure I did not.

Q Did you tell him anything about the financial backing you had?

Mr. Peaks: I object.

A I do not remember that I did.

Mr. Williams: Q Did you say anything to him about the amount of business that you were doing, or the size of your organization, or who were back of it?

A I do not remember that I did.

Q At the date of this letter, that is, August 10, 1915, were you familiar with the negotiations which were pending between the Splitdorf Company and the Sumter Company?

A I knew something about those.

Q Did you say anything to Podlesak about those negotiations, or what would result from them?

A I do not think I did. I do not remember that I did.

Q Did you mention the Splitdorf backing of the Sumter Company, in talking with Podlesak?

A I do not remember that I did.

Q You do not remember that you did not, do you?

A No, sir, I do not.

Q And the fact was that there were negotiations pending?

A Yes, sir.

637 Q. And that the stock of the Sumter Company at that time was owned largely by the same interests who owned the stock of the Splitdorf Company?

(Objection—overruled.)

A Some of the stock was owned by the same interests.

Q By whom?

A Yes, sir.

Q By whom?

A The individual?

Q Yes.

A Mr. Alvord.

Q What proportion of the stock of the Sumter Company did he own at that time?

Mr. Peaks: I object.

A I do not know.

Mr. Peaks: I object.

Mr. Williams: Q Well, was it a large, or was it a small amount?

Mr. Peaks: I object.

The Court: He may answer,—unless he does not know. He may be able to answer this question.

A I do not remember what percentage it was, at all.

Mr. Williams: Q No, I say, was it a large or a small amount?

Mr. Peaks: I object.

The Court: He may answer.

A Well, it was a large amount.

Mr. Williams: Q Was he the largest stockholder, at that time?

Mr. Peaks: I object.

A I do not remember.

Mr. Williams: Q Do you know of anyone else who was as large a stockholder?

Mr. Peaks: I object.

A No, sir.

Mr. Peaks: Wait a minute.

638 The Court: He may answer. He has answered?

The Witness: Yes.

The Court: It may stand.

M. Williams: Q. You are connected now with the Splitdorf Company, are you not?

A Yes, sir.

Mr. Williams: Q Are you an officer of that corporation?

A I am a director.

Q Is Alvord a stockholder of the Splitdorf Company?

A Yes, sir.

Q Is he the largest?

Mr. Peaks: I will admit that Mr. Alvord is the controlling spirit.

A I do not know.

Q Do you know of any larger?

A I do not know of any—I mean, I think you are trying to get me to admit there that he is. I do not know that he is, or is not.

Q Now, this letter, after saying that you had scared H. J. pretty well, says that from what you could get out of him today, 'it appears that he has the right under his agreement with the Webster Company to manufacture any of the Podlesak outfits himself, or to sell his patents, with this right to manufacture and sell without interference from the Webster Electric Company. Brown would probably dispute this.' Is that the substance of what Podlesak said to you?

A I imagine—I presume it is, yes, sir, whatever I wrote there.

Q And this Brown is the same Brown that you previously referred to?

A Yes, sir.

Q Did you learn at the time of this conversation with Podlesak which is detailed in this letter that a bill of complaint had been prepared or executed to be filed in the interests of the Webster Company and against the Sumter 639 Company with which you were connected under the Podlesak reissue patent involved in this suit?

A I don't remember that I did.

Q Did Podlesak tell you that at that time?

A I don't remember that he did.

Q When did you first learn of the suit commenced by the Webster Company against the Sumter Company at Charleston, South Carolina?

A I don't remember.

Q Was it before or after September 4, 1915?

A Well, if I heard it at all I should think it would be before. But those are matters that I was not handling and did not—I was not very familiar with them.

Q You don't remember now?

A I don't remember that I heard it, no. Perhaps it was not until Mr. Van Deventer and Mr. Clement came up here.

Q When was that?

A That is about the last of July; the latter part of July.

Q 1915?

A Yes, sir.

Q And at that time you may have learned of it?

A Yes, sir.

Q Do you know how you first learned of it?

A No.

Q Whether it was from Van Deventer, or by letter or how?

A No, I don't remember.

Q What did you mean in this letter of August 10, 1915, when you said, 'Now, if Mr. Brown, the Webster people, gets too obstreperous'; what did you mean by 'getting too obstreperous'?

(Objection—overruled.)

A Well, I already referred to that, your Honor, in a previous answer, and said that what I had reference to was

Mr. Brown's objecting to my activity in the field, in the stationary engine ignition field.

Q Did you have in your mind the bringing of a suit 640 at the time you used this phrase in that letter?

A No, sir. I was no more— What I had reference to and the impression I had was, in using that phrase, was his objecting to our activities in the stationary engine ignition field.

Q The bad feeling between Brown and Podlesak to which you refer in this letter, was that bad feeling a matter which Podlesak told you about, or something that you knew about independently of his conversation with you?

A No, I don't remember just now or what time I heard it, but I understood there was some bad feeling and that Mr. Emil Podlesak had been discharged from their business.

Q When in this letter you say that 'H. J. and Emil will be in the frame of mind to consider such negotiations with us as would let us right into the Webster business,' what did you mean by letting yourselves right into the Webster business?

A Well, I meant that if we bought any rights which they had under the machine, that Mr. Podlesak showed me and which he was preparing to manufacture, that in addition to our line of oscillators it would give us the right also to manufacture a Podlesak bracket like he showed me, a magneto known as the Sylvan, as he called it, and that that magneto was very similar to the Webster magneto; and that we would then not only have the right to manufacture the plug oscillator to ourselves but the other type of machine as well, if not the tri-polar magneto as Mr. Podlesak had explained to me that Mr. Webster had the exclusive license on it.

Q When you referred to letting yourselves into the Webster business, you were referring, as I see it, to yourselves?

A As I said,—

Q Just a minute. When you say here that—When you refer to letting yourselves into the Webster business, I understand you now to say that you meant this Sylvan machine which the Podlesaks had gotten up, which he showed to you.

641 A I simply mean this, Mr. Williams: It would let us into the field which they were occupying with another type of magneto than our own; we had the plug oscillating magneto with the springs in the bracket, and using the rotary type on the bracket so that we made an oscillator, and things of that kind. If we had the Sylvan machine, we would then

be in position also to have a machine that would be of a different type from the plug oscillator we had with the springs on the bracket of the magneto—I mean, on the plug itself. But I should have said there—I mean, I could have expressed my meaning, I think, more clearly had I said the Webster field rather than the Webster business.

Q That is, you could let yourselves right into the Webster field?

A Yes, in the field. You know, those are terms that are used by salesmen very often without considering their technical significance,—As meaning class of trade that they were handling, the stationary engine field.

Q And it was in your mind that you could go into that field or that line of business with this Sylvan machine, with the plug oscillator? That is, that the Sylvan machine would put you in position to cater to that trade?

A We were already catering to that trade; we were handling it very satisfactorily. But our machine was different entirely from the Webster machine, and if, for any reason, we wanted to manufacture both types of machine, why, we would then be in position to do so. But as a manufacturer, I naturally would not want to manufacture two types of any model that one type would handle, because we understand in a manufacturing business you want a large production in as few models as possible.

Q Do you mean to say that your plug oscillator would fill the same market exactly as the Webster machine if you had seen fit to use it for that purpose?

A It was already filling a field which was in competition with the Webster machine, selling to the same customers for use on the same machines.

The Court: That is, salable to them for the same purpose?

The Witness: It would be salable to any manufacturer of stationary engines just as the Webster machine and as any other magnetos are interchangeable.

Mr. Williams: Q So that where you referred here to letting yourselves right into the Webster business, you meant letting yourselves into the same market?

A Yes.

Q Putting yourselves in the same market?

A Yes. In other words, with a different type than we already had.

Q So that you would have the two types to cater to the same market?

A Exactly so.

Q The next phrase of this letter is, 'And with their line and the plug oscillator we sure would be in shape to command the field'; what did you mean there when you said 'with their line'?

A With their peculiar type of machine.

Q The Webster, or the Podlesak?

A Well, it is all the same.

Q Was the Sylvan the same as the Webster?

A Except that the magneto was made with two poles instead of three; that is the only difference I knew anything about.

Q And when you referred there to 'their line,' did you refer to 'their,' the Webster Company line?

A With a line similar, yes. A machine which would be the same machine with a different magneto, see? A two-pole magneto instead of a three.

Q The sentence reads here this way: 'I think H. J. and Emil will be in the frame of mind to consider such negotiations with us as would let us right into the Webster business, and with their line and the plug oscillator we sure would be in shape to command the field.' Now, does that 'their' mean Webster or not?

A Well, it means the type of machine, their line; it means the type of machine similar to theirs.

Q To the Webster?

A Yes. Mr. Podlesak had made it very clear to me that he could not manufacture the Webster machine.

Q When the negotiation which you later had with the Podlesaks was concluded and it came to the matter of paying them some money, whose check was it that made the first payment to the Podlesaks of \$25,000?

The Witness: Splitdorf Electrical Company.

Mr. Williams: Q How was that check made payable?

A F. C. Manning.

Q That is, to you?

A Yes.

Q And it was by you endorsed, was it, and paid to the—delivered to the Podlesaks?

A Yes, sir.

Q The assets of this Sumter Company of which you were an officer in August, 1915, were sold in toto to the Splitdorf Company at about that time. were they not?

A Just a little later than that, I think.

Q Was there, on the 22nd of August, 1915, a meeting of the stockholders of the Sumter Company to confirm a sale to the Splitdorf Company of all of these assets?

(Objection and discussion, no answer to question.)

Q At any rate, prior to the consummation of your negotiations with the Podlesaks on September 4, 1915, the negotiations between the Sumter Company and the Splitdorf Company had been concluded, had they not, so that what more was to be done was simply in carrying out what had been arranged or agreed upon?

644 (Objection.)

The Court: Q Have you the date in mind?

The Witness: No, sir, I have not. They are all matters of record and I don't remember the date.

The Court: I think they can supply them. Mr. Peaks will supply them.

Mr. Peaks: I will try to.

Mr. Williams: Q Whom did you represent in your negotiations with the Podlesaks, all of them?

A Well, I don't know who I represented. I did not stop to consider that; just went ahead with the thing.

Q Were you representing some one?

A I was employed by the Sumter Company; I was a member of the Sumter Company?

The Court: Then you represented them?

The Witness: Yes, sir.

Q Did you represent also the Splitdorf Company?

A No, sir.

Q Whom did you represent when you paid to the Podlesaks the Splitdorf Company's check which was made payable to you and endorsed by you and handed to the Podlesaks? Whom did you represent in that part of the transaction?

A I don't know.

Q Where did you get the check?

(Objection—Overruled.)

A The check was handed to me by the Splitdorf Company.

The Court: It was not drawn by you?

The Witness: No, sir. It was made payable to me.

Mr. Williams: Q You had a meeting, did you not, with the Podlesaks, on August 20, 1915, here in Chicago?

A About that date. I am not certain of the dates.

645 Q What is the date of the option that you took from the Podlesaks? Do you recall that?

A No, sir, I do not.

Q Have you got that option?

A No, sir.

Q Who has it?

A I don't know.

Q What did you do with it?

A It was handled by the attorneys.

Q The option ran to you, did it not?

A Yes, sir.

Q To consummate some contract?

A It was in my name, yes, sir.

Q Was it delivered to you?

A I don't—

Q —by the Podlesaks?

A Well, the attorneys handled it. I was only the fellow who signed it, or did whatever the attorneys told me to do; you know how those transactions are handled.

Q Do you know where that paper is now?

A No, sir, I don't.

(Discussion between counsel as to present whereabouts of option, defendants' counsel agreeing to make inquiry about it.)

Q At the time that option was signed and delivered you had a meeting, did you not, in Great Northern Hotel here?

A Yes.

Q And there was present whom besides yourself?

A Mr. Van Deventer, and Mr. Clement, and Mr. Henry Podlesak. And later Mr. Emil Podlesak.

Q At the time of that meeting with the Podlesaks 646 and at which the option running to you was signed and delivered, did you know that the Sumter Electrical Company was in process of dissolution and that that dissolution had been approved by its stockholders at a meeting held prior to that time, and that the Splitdorf Company was taking over, or had taken over, or was in process of taking over, the assets and the business of the Sumter Company?

(Objection—Overruled.)

A I knew there was a transaction pending but what its status was I did not know.

Q You yourself were one of the trustees to whom this property was transferred or by whom it was held during the course of the dissolution, were you not?

A I think I was.

Q Did the Sumter Electrical Company of South Carolina, of which you were an officer and a director, in August and September, 1915, did they ever put a dollar of money into

the purchase or whatever may have been acquired or attempted to have been acquired from the Podlesaks by this instrument of September 4, 1915?

(Objection, and discussion between counsel as to the date at which the Splitdorf Company first participated in the negotiations with the Podlesaks. Objection overruled.)

A I think they did.

Q When did they put money into that purchase?

A When they secured the option?

Q That is the option which ran to you?

A Yes.

Q How much did they put in them?

A I don't know.

Q What?

A I don't remember.

Q Who paid the money?

647 A One of the lawyers.

Q How was it paid?

A I think by currency.

Q Did they ever put anything—What was that, some payment of a dollar or something of that sort?

A More than that, I think, but I don't remember what it was.

Q A trivial sum?

A Yes; it was small.

(Objection to question and answer—overruled.)

Q Aside from that payment of earnest money, as I understand it, by somebody who was present at this conference at the Great Northern Hotel at the time the option was executed and delivered, did the Sumter Company ever put a cent into this—pay a cent of consideration for this contract of September 4, 1915?

(Objection—overruled.)

The Witness: Well, Judge, I didn't handle it, and I really don't know.

Mr. Williams: Q As an officer and director you never heard of any further or other payment being made by the Sumter Electrical Company to the Podlesaks, did you?

A Well, I never heard of it, but it may have been done.

Mr. Peaks: Let me make this admission. If counsel does not agree with it, it won't do any harm. The Sumter Company paid \$25,000 to the Podlesaks, and the Sumter Company borrowed the \$25,000 from the Splitdorf for that purpose.

The Court: That is an admission that is material. That is material.

* * * *

The Court: Let me ask you whether the Sumter Company secured the payment of the loan.

Mr. Peaks: By taking an option.

The Court: By a note or anything?

Mr. Peaks: By taking the option and the contract in 648 favor of both jointly.

The Court: Did they give any note for the \$25,000?

Mr. Peaks: That I don't know, but I will inquire and tell your Honor.

The Court: All right.

Mr. Peaks: Possibly the witness will know, I think Mr. Van Deventer will know.

The Court: Q Do you know anything about it, Mr. Manning?

The Witness: I know nothing about it.

The Court: He doesn't know anything about that, he says.

Mr. Peaks: I understand, Mr. Sturtevant tells me—I didn't know it when your Honor asked me—I understand that they gave notes.

The Court: They gave notes?

Mr. Peaks: That is my information.

Mr. Williams: If they gave them, can you show them?

Mr. Peaks: I couldn't. I never heard of them before.

The Court: If you can produce them we would like to see them.

Mr. Peaks: Whether they are at Sumter or at Newark, or where they are, I don't know.

The Court: They know over there.

Mr. Peaks: They will know over there and we will tell your Honor when we come back after lunch.

The Court: Yes, all right.

Mr. Peaks: If they are in existence they shall be here before this case is ended.

* * * *

Cross-Examination by Mr. Peaks.

Q Mr. Manning, you were asked on your direct examination whether you knew of the fact whether Mr. Emil Podlesak had been discharged by the Webster Electric Company, something about that. Did you learn, or did you under-
649 stand, or did you come to know what the circumstances

leading to the severance of his relations with the Webster Electric Company were?

(Objection—overruled.)

A No, sir; I did not.

The Court: He didn't know anything about that.

Mr. Peaks: Q Did you ask any questions of them about that?

(Objection—overruled.)

A I don't remember that I did.

Q You say that Mr. Clement was the lawyer for the Sumter Company?

A Yes, sir.

Q Mr. Clement was a lawyer who devoted himself, did he not, exclusively to patent practice?

A That is all, yes, sir.

Q That is, he was the patent lawyer of the Sumter Company?

(Objection—overruled.)

A Only in connection with patent work, in connection with Mr. Van Deventer's patent work. I understood in these matters he was perhaps an associate with Mr. Van Deventer in the patent work that he handled.

Q That is, he was Mr. Van Deventer's patent counsel?

A Yes, sir.

* * * *

Q Did you understand during the times referred to, that when you were dealing with the Podlesaks you were dealing with the men who dominated and were in your trade recognized and conceded to dominate the right to this bracket feature of the device?

(Objection, sustained, exception. Discussion between court and counsel.)

* * * *

650 Mr. Peaks: Q Then, about the letter that you wrote to Mr. Van Deventer, do you know if he ever got it or not?

1 A I only know that he has told me several times that he never got it.

Q He never acknowledged it?

A No, sir.

1 Q He never answered it?

1 A No, sir.

1 Q You say that you represented the Sumter Company. When did you first represent the Splitdorf Company? When did you first draw any salary from the Splitdorf Company?

(Objection, discussion, withdrawal of question.)

The Court: Can you tell when you first represented the Splittorf Company?

A Technically I don't see how I can.

Mr. Peaks: Q Do you know when, have you any recollection at all as to the date when any Sumter stockholders' meetings were held, looking toward the dissolution of that company, or not?

A No, I do not remember the date.

Q Do you remember whether August 20, 1915 was the date that you took the original option from the Podlesaks, or do you or don't you?

A I am not definitely sure of the date. It was about that time, I am satisfied.

Q When you said you were one of the trustees of the Sumter Company, you meant you were one of the liquidating trustees appointed under the South Carolina statute; that is right isn't it?

A That is all, yes, sir.

Q Who were the others?

The Court: I notice in the Splittorf contract the option is cited as dated August 20, 1915.

Mr. Peaks: Q Was it taken on the day it bears, whatever it was, Mr. Manning?

651 A Absolutely.

(Discussion between counsel and with the court respecting the date of the option.)

Q You were asked something about the payment of the consideration for the option, or what was paid, and whether it was trivial, or whether it was substantial, something of that sort. Do you remember what the amount was, or not?

A No, I do not.

Q Well, was it a dollar or was it \$25,000, or anything in between or more or less?

A I think it was less than \$100.

Q What?

A I think it was less than \$100.

Q That was for the original option?

A Yes, sir.

Q When that option was exercised and the contract was closed, do you remember what was paid?

A \$25,000, I believe.

Q That is according to the terms of the contract, that is recited in the contract, as I recollect it?

A Yes.

Q And that initial payment mentioned in the contract of \$25,000 was actually paid, was it?

A Absolutely.

Q By whom? That is, by what individual? By you?

A By myself.

Q Yes. You paid that, as I understand it, with the Splitdorf Company's check to you?

A Yes, sir.

Q Do you know whether it is a fact that the Sumter Company gave its notes to the Splitdorf Company for that \$25,000 and paid interest on the notes?

A I don't know how it was handled. I know there was some—

652 Q Well, you knew you got the Splitdorf check?

A Yes, sir.

Q You were an employe of the Sumter Company?

A Yes, sir.

Q Who arranged that for you, who sent it to you, or how did it come to be sent to you? You didn't borrow it; you didn't get it. Now, who caused it to be put in your hands?

A Mr. Alvord.

Q Mr. Alvord, and he was—

A Stockholder of the Sumter Company.

Q Of the Splitdorf Company?

A And stockholder of the Splitdorf Company, both.

Q Do you remember who signed the check of the Splitdorf Company?

A Signed by its treasurer.

Q Do you know how the matter was treated, as a matter of bookkeeping, or evidence of indebtedness, or security, or the payment of interest, or anything else? You don't recall that?

A No, I don't.

653 E. J. KANE, recalled, testified as follows:

Direct Examination by Mr. Williams.

Witness produced a sample of a plug member which he stated was substantially identical with the old plug which was installed on an engine when the magneto marked Plaintiff's Exhibit 11 was used, and demonstrated how it was assembled in relation to the magneto by placing it in the same relation to it as shown in the booklet Plaintiff's Exhibit No. 13. The plug was offered in evidence as Plaintiff's Exhibit No. 11A.

H. R. VAN DEVENTER recalled on behalf of plaintiff, further testified as follows:

Direct Examination by Mr. Williams.

Witness heard the testimony of Mr. Manning relative to his letter of August 10, 1915 to the witness. Asked when he first saw the original of that letter, witness testified:

A I do not know. It was several weeks after it was written, quite a long time, in fact,—if I ever saw it; I do not remember that I ever saw it.

Q When were the contents or the substance of that letter first communicated to you, and how?

A Why, I went up to Newark sometime about the 10th or 11th.

Q Of August, 1915?

A Of August, 1915; and went from Newark to Chicago; and I saw Mr. Manning, and he told me that he had written such a letter; and we discussed the contents of it.

Q Whom were you interviewing at Newark?

A Mr. Curtis.

Q Of the Splitdorf Company?

A Yes, sir.

Q When did you first learn of the fact that a bill of 654 complaint filed, or executed,—verified, on behalf of the Webster Electric Company, for the purpose of commencing suit against the Sumter Company of South Carolina, at Charleston, South Carolina, had been signed? When did you first learn of that fact?

A Sometime, when I was in Newark, our attorney in Sumter telegraphed that a suit had been filed. I could not identify it as that suit, but he just telegraphed me that there had been a suit filed, a suit brought against us.

Q That was while you were in Newark, immediately after the 10th of August, 1915?

A Yes, sir.

Q When was it, following your trip to Newark, on the 10th of August, that you first came to Chicago?

A Well, it was immediately after, a few days; I do not recollect; perhaps the 15th, or perhaps the 16th.

Q You heard Mr. Manning's testimony about a conference at the Great Northern Hotel as the result of which an option was executed, did you not?

A Yes, sir.

Q What was the date of that conference at which the option was executed?

A I think that was August 20th.

Q 1915?

A Yes, sir.

Q You knew of the commencement of the suit by the Podlesaks and the Webster Company, against the Sumter Company, at Charleston, South Carolina, before you arrived here in Chicago, and during which time you had this conference on August 20th, 1915, did you not?

A To the extent that I have told you,—that I had gotten the telegram from the lawyer.

655 Q Mr. Clement came with you to that meeting here, at Chicago, on the 15th of August, or following that, and concluding on the 20th of August, 1915, did he not?

A Yes, sir.

Q Where did you join him to come here?

A I think he met me in,—I think he met me in Newark.

Q In Newark?

A I am not sure. I might have gone to Washington, and picked him up, and gone from Washington to Chicago. I often did that.

Q What was the occasion of your coming on to Chicago at that time with Mr. Clement?

A Why, we were having some general discussion in and about the matter of a Milton patent, which was not the one in this present suit, but another Milton patent, about which you and Mr. Brown had gone to Newark, and had threatened suit on there against the Splittdorf Company.

Mr. Peaks: Q When you say 'you,' whom do you mean?

A Mr. Lynn Williams.

Q The counsel examining you?

A Yes. And I had gone out here to find out, out here, what we could around and about that patent, if I recollect the matter right, at that time. I think that was the main purpose of that visit.

Mr. Williams: Q What did you do here, in following up that matter, to learn about the Milton patent?

A Why, I think we had some talk with Mr. Henry Podlesak about it; I do not recollect who else; two or three people here, I believe.

Q That is what you came for, when you started?

A I think that was the principal thing at that time. There

might have been something in connection with this plug oscillator business.

Q Now, had you at the time you and Mr. Clement 656 started for Chicago seen a copy of this letter from Manning, dated August 10, 1915?

A Not that I recollect.

Q Well, do you swear that you had not seen it?

A No. It might have been sent to me at Newark, and I might have read it, as I would twenty other pieces of mail that would come into my office.

Q But, at any rate, that had nothing to do with Clement, coming on here to Chicago?

A Nothing whatever that I can recollect.

Q Now, when, how soon after you got to Chicago here did you see the Podlesaks, or either of them?

A Well, I do not know exactly, but almost immediately; two or three days, perhaps.

Q And then you conferred with them on more than one occasion, did you, before the 20th of August?

A No, never before that time. The time we met them in the Great Northern Hotel was the first time I had ever seen either one of them.

The Court: Q You did not meet Henry in regard to the Milton patent, then?

A Prior to—

Q Except at that time?

A That is all, yes, sir.

Mr. Williams: Q Now, who was it, if you know, that arranged that conference at the Great Northern Hotel on August 20th?

A Mr. Manning.

Q And at the time, then, of this conference, at which you participated with the Podlesaks, on August 20, Manning had by that time communicated to you the substance of the matters which he detailed in this letter of August 10, 1915, had he?

A I think so, substantially so.

Q Well, that is your recollection, is it not?

657 A Not all of them, because I do not think that some of the matters that are mentioned in the letter were ever referred to at all, between us.

Q Which matters?

A Well, the matters of the general business, the business conditions. I was more particularly interested at that time in the patent end of it; and he told me that the Podlesaks

knew about these patents, and about this magneto art, and I think that nearly all of my time with Manning was confined to that phase of the matter.

Q Then, until you met the Podlesaks, there were certain matters detailed in this letter concerning which you had not talked with Manning; is that right?

A I think so. The general situation in regard to the business and the gas engine field, I do not remember discussing at that time with him. That was his end of the business.

Q Can you refer to the parts of this letter of August 10, 1915, which is Plaintiff's Exhibit 61, the parts that had not been brought in any way to your attention before meeting the Podlesaks on August 20, 1915 (showing Exhibit 61 to the witness)?

(Objection—overruled.)

A Well, we did not discuss anything about this Milton agreement that he refers to in here; and we did not discuss anything about Milton's high tension machine and the Webster Company. We did not discuss anything in relation to the Webster business, that is referred to in here. I think that is about all that we did not discuss, that I can recollect of.

Mr. Williams: Q These Milton matters referred to in this letter, and to which you just called attention, they were the matters upon which you say that you and Clement started on here, out to Chicago, were they?

A I think so, yes, sir.

Q But after you got here you did not talk about them?

A Oh, yes. We talked—

658 Q With Manning?

A Well, we talked with Mr. Manning, and— We talked with Mr. Podlesak; not with Mr. Manning. We asked him about the patents, and what he knew about them.

Q I did not get the last.

A I say we asked him what he knew about the patents, and the early art, around and about that type of machine that is shown in that Milton patent.

Q Now, when you talked with Podlesak at the Great Northern Hotel on August 20, 1915, you knew, I presume, that one of the patents relative to which you were negotiating was the patent on which the suit had been commenced against your Company, at Charleston, South Carolina, did you not?

A I presume so.

Mr. Peaks: I object, and move to strike the answer out. If the witness knows, he should state, and—

The Court: You should give us a definite answer, if you can.

A Why, I thought it was one of the Podlesak patents, but I did not know which one, or whether it was one that I had never heard of before or not. The only knowledge that I had was that we had been sued under a patent.

Mr. Williams: Q Did you talk with Podlesak, or either of the Podlesaks on August 20, 1915, about the patent upon which suit had been commenced, or about the fact that a suit had been commenced against your Company, at Charleston?

A Yes. Yes, that I think was mentioned; I do not think it was discussed at any great length.

Q Now, do I understand you to say that, although you were negotiating with the Podlesaks on August 20th, and although you knew the suit had been commenced against you at Charleston, that you did not then know that one of the patents about which you were negotiating was the patent on which the suit had been commenced? Did you connect those two things at that time, or not?

659 A I understood you to say, did I know prior to that time, prior to that time, that that was one of the patents. I knew that—

Q I did ask you that sometime ago, but now I am asking you whether or not you knew on August 20th, when you were talking with the Podlesaks, about the matter which culminated in the option executed on that date, that the option included in some way the patent upon which your Company had been sued at Charleston?

A Certainly I knew it.

Q Did you, in a suit in the District Court of the United States for the Eastern District of Wisconsin, in which Emil Podlesak was plaintiff, and Webster Electric Company was the defendant, give a deposition at Sumter, South Carolina, beginning on the 24th day of May, 1917, and did you in that deposition make the following answers to the following questions:

‘Q Are you supplying them with a plug oscillator in connection with any other equipment of any kind, a so-called plug oscillator?

‘A Not from these works, and I understood your former question to apply to what was furnished from these works.

‘Q Then the device shown by Figure 1 is supplied to Fairbanks, Morse & Company, but not from Sumter?

'A Yes, sir.

'Q And it is assembled in Chicago, and supplied by the Sumter Electrical Company of Illinois; is that what you mean?

'A No, sir. The history of that device there, Figure 1, as shown on page 38 of the booklet, is this,—that the magneto proper was manufactured at Sumter, and was shipped to Chicago, and the balance of the equipment making up the complete device was manufactured in Chicago, the magneto mounted thereon, and the complete device shipped to the Fairbanks, Morse Company.

660 'Q Then the plug oscillator part of the device was made in Chicago?

'A Has been, up to the present time.

'Q On August 20, 1915, when this meeting was had to which I have reference, were the facts as to the device shown at Figure 1 the same then as you have described?

'A If we were making them at that time, yes. Perhaps I can save some time in this examination by stating that we have never shipped any of the devices known as the plug oscillator from Sumter to any customers, with the possible exception of perhaps twenty-five or thirty machines.

'Q You mean the Sumter works?

'A Yes, sir.

'Q The facts, however, as to the supplying of this device to the trade with reference to the assembling in Chicago, are as you have previously stated?

'A Yes. We located a man in Chicago who could undertake the manufacture of the device, comprising bracket and igniter mechanism, and he made this under our authority and by our direction, in Chicago, our purpose being to save freight.

'Q Whom do you mean by "our"?

'A The authority, first, of the Sumter Electrical Company of South Carolina, and, after the dissolution, of the Sumter Company, by the authority of the Splittorf Company.'

The question is whether you so testified in this deposition, in the suit to which I have referred?

(Objection, followed by discussion between counsel and with the court wherein it developed that in a stipulation between counsel it had been agreed that depositions taken in the case of Emil Podelsak v Webster Electric Company might be offered in evidence in this case without certification or verification.

661 The Court: I think, Mr. Williams, it would be perfectly proper to let your question, repeating these questions and answers, stand as your offer, subject to correction, of that testimony; you offer that much from the deposition.

Mr. Williams: Well, I so offer it.

Mr. Peaks: I object to it.

The Court: That is proper, under the stipulation, as I understand it.

* * * *

Mr. Williams: Q In this same deposition, to which I referred in my last question, appears the following, in the form of question and answer:

'Q Did you produce the correspondence that I asked for at the last hearing?

'A I have made a search of my files, and find a letter from Mr. Manning, dated August 10, 1915, a true copy of which I herewith produce. (Letter marked for identification with the initials of stenographer, "E. M. D."; the same here incorporated in the record, and returned herewith, as follows:

"Copy

To Sumter Works

August 10, 1915

"H. R. V.

"Subject: Patent Matters.

"Dear Van:"—

And then, following, a letter identical with the copy which is marked Plaintiff's Exhibit 61 (handing exhibit to the witness), and signed "F. C. M."; then, following, a question, reading:

"Q Is this the only correspondence that you have relative to this subject?

"A That is the only correspondence I can find that relates to the Podlesaks, and those contracts and patents.

"Q Have you a copy of the answer which was sent to this letter?

662 "A No, I have not, and it does not appear that there ever was an answer sent, because I went out there immediately after that time; I was in Chicago within a week or ten days after that; in fact, I was there on August 20, 1915, and this matter was verbally discussed and settled.

"Q But you have said in this examination that you were in the North, and were told to go to Chicago, and take up this matter with the Podlesaks. Is that because this letter was received in your absence, and word sent to you?

"A I think so. I do not think I was in Sumter when this letter got there. Whether I came there between the 10th and 20th of August, I do not know.

"Q What would be the custom at your office with reference to a letter of this kind? Would a wire be followed by a copy of this letter to you?

"A If I were going to remain very long, it would but I do not generally stay very long; they would probably wire me the substance of the letter.

"Q And then when you got back to Chicago you would see Mr. Manning, and whatever was in this letter would be discussed with you then?

"A Yes, sir."

Now, did you so testify, in the suit which I have entitled?
Mr. Peaks: I object.

The Court: You may offer that in evidence. That is the same deposition.

(Discussion between counsel and with the court.)

The Court: The objection is sustained. You can put it in just as an offer.

Mr. Williams: Then we offer it as an admission.

The Court: It amounts to the same thing. There are 663 two different ways of getting at the same result."

Here ensued a discussion between counsel with respect to a check signed by the Webster Electric Company and payable to the Splitdorf Electrical Company, produced by plaintiff's counsel and submitted to defendants' counsel, as a result of which discussion defendants' counsel, Mr. Peaks, was called to the witness-stand by plaintiff's counsel.

GEORGE H. PEAKS called as a witness on behalf of plaintiff, testified as follows:

Direct Examination by Mr. Williams.

Age 46, residence, Evanston, Illinois; occupation, attorney-at-law.

The witness further testified:

Q Will you look at this paper, and say whether you can identify it?

(Check shown witness.)

A I cannot.

Q You cannot?

A There is no distinguishing mark by which I can identify this particular paper. I can testify that it appears to be, and I believe it to be one of the checks, one of the series of checks issued by the Webster Electric Company of West Virginia to the order of the Splitdorf Electrical Company, which have been sent to our office, and have passed through my hands. Does that answer your question?

Q Let me ask you whether this particular check which you hold in your hand is a check which was received in your office in due course of mail following the 13th of January, 1919?

A I do not recognize it, but I have no doubt of it. There is nothing on it by which I could identify it. Such a check was received; whether for this amount, or whether this 664 is the particular piece of paper, I could not say. I know that one came in.

Q At about that day?

A And was on my desk, about the 14th or 15th of this month,—from the Webster Electric Company; and I told our bookkeeper to send it through in the usual way; and I have no doubt this is the paper.

Q You mean the 15th of January, rather than of this month?

A Yes. It was a day or two after we started the trial of this case, which I think was the 13th. I have no doubt this is the paper.

Q Now, the check which you say was received from the Webster Electric Company in your office on about the 15th of January, that was forwarded by whom, or to whom did you give directions that it should be forwarded?

A Well, I found it on my desk, with the morning mail, and I have no doubt it was received from the Webster Electric Company, as it always had been, from their office in Racine; at least I saw such a check on my desk, and turned it over to our bookkeeper, and I said, 'I haven't got time to attend to this; send it through in the usual way.' I do not find myself able to say that this is the piece of paper. I have no doubt that it is, if you say so. Mr. Brown would know.

Q And to whom was the bookkeeper in the regular way to send that check?

A Oh, I do not know. I suppose to the Splitdorf Company, yes,—at least, that is my assumption. There is no doubt about that, Mr. Williams.

The Court: Q Who is the payee in the check?

A The Splittdorf Electrical Company.

Mr. Williams: Now, I think I will offer the check, and ask that it be marked as Plaintiff's Exhibit No. 63.

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DEFENDANTS' EVIDENCE.

JOHN LEWIS MILTON called as a witness on behalf of the defendant, testified as follows:

Direct Examination by Mr. Bulkley.

Residence, Cleveland. Was never in the employ of the Webster Electric Company, but was in the employ of the Webster Manufacturing Company, beginning about the fall of 1905. The company was then engaged in the manufacture of elevating and conveying and power transmitting machinery, gray iron castings, large castings. Prior to entering the employ of the Webster Manufacturing Company witness had been engaged in the manufacture of dynamos and motors and ceiling fans for a number of years, beginning in 1897. When witness first went with the Webster Manufacturing Company he went there primarily to sell an ignition device known as the auto-igniter. The Webster Manufacturing Company held some patent rights under patents controlled by a man by the name of Curtin, which appeared to be a promising device. They covered inductor alternators for ignition apparatus. Witness was developing a machine of his own which was the result of some experience he had had with gas engines prior to that time. When witness learned that the patents mentioned were under the control of the Webster Manufacturing Company he went with that Company in Chicago and told Mr. Webster that he was interested and wanted to make some arrangement to link up with him on the development and sales of that work. That was Mr. T. K. Webster. Mr. Webster was interested and at once went with witness to the International Harvester Company, to a man by the name of Cowen, who was in the Sales Department. The first work witness did in connection with the development of the Curtin magneto was to offer it to

the International Harvester Company, and they refused 666 it. Being asked how he happened to offer it to the International Harvester Company except through the Webster Company, witness testified:

A I didn't, Mr. Webster took me down there to talk with these people with the idea of finding out about how much I knew about it, and that day he made me a proposition to take hold of the sales, and very shortly after that I started in on the sales work and found that it was not a salable apparatus; that is, at least to the Harvester Company.

Q Did you take it up with the Harvester Company to determine whether it was a salable apparatus or not?

A I was directed by Mr. Cowen to take it up with the Harvester Works at Milwaukee. He instructed me or gave me a letter or a card.

Q Never mind about that. Just tell what happened at the International Harvester Company.

A It was offered to a man in charge of their experimental work, Mr. Podlesak, Mr. Henry J. Podlesak, who had had experience with the machine, and finally he rejected it, or rather would not accept it. He showed me the mechanical weaknesses of it. Then I started my development, after having told Mr. Webster what these troubles were.

Q About how long were you before you commenced to start your development after you had gone with the Webster Manufacturing Company in 1905?

A Oh, about, I fancy about a month after that.

Q Then what happened? Just go along quite generally, Mr. Milton.

A The result of it was that I developed a machine that overcame the—most of the objections. It was offered to the Harvester Company and later on was offered to the Fairbanks Company.

Q Is that what you call a low tension or a high tension magneto which you were then working on?

A It was a low tension rotary magneto which was to be built into the engine. It was not a separate self-contained 667 device. We put a part of it under the main crank shaft. That was the rotor. The stationary part was bolted to the frame of the engine in one of several different ways.

Q Just tell me, Mr. Milton, what the condition of the art was at that time. Whether these magnetos were generally used on harvester engines or stationary engines at that time.

A At that time I do not recall of anybody using magnetos of this type on any stationary engines in this country.

Q What type do you mean when you say 'this type'?

A I mean that type of magneto where there would be an impulse or current generated at the time that ignition was required. There were other little magnetos. They were called magnetos, but they were magneto dynamos that ran at high speed, ran off the fly wheel of the engine, ran by a belt, and they were being used, but they were very troublesome for many reasons. They were a bit better than batteries if you could get started on them.

Q Were batteries used at that time quite generally for ignition?

A Almost universally.

Q Go right along and tell us what further—

A They were a source of a great deal of trouble.

Q Yes.

A We found all the engine manufacturers very much interested in getting an electrical, an electric generator or magneto that would do away with battery troubles. So the development progressed. This machine was, this machine that I have mentioned to you, was offered—

Q A little louder.

A —was offered to the International Harvester Company. Again it was not approved, and in the year of 1906 the Fairbanks Company used a few of them.

Q Now, when you say 'the Fairbanks Company,' you mean the Fairbanks, Morse Company?

A The Fairbanks Company is different from the,—
668 a different company from the Fairbanks Morse Company.

Q Oh, all right.

A The Fairbanks Company is a sales company in New York that had their engines manufactured for them under contract. At that time the Field-Brundage Company of Jackson, Michigan, were making their larger horizontal engines, and Bates & Edmonds of Lansing, Michigan, were making their smaller vertical engines, and we submitted samples to both of these companies. The Field-Brundage Company used them on their engines in connection with batteries. That is, they used a battery for starting the engine, and then switched it over to the magneto and they would run continuously under magneto, and they had very good satisfaction, and that developed into a very good business, and I heard promptly of Bates & Edmonds, and I got up another type of magneto,

which was known as our type 'C,' as I recall it, 'C' or 'C-1.' That was built into the fly wheel. It was built large and square and very flat, so that it could go on the fly wheel without discommoding the rest of the machinery, the rest of the engine, and that developed into the best business that we had with the Fairbanks Company. Later on there was some complaint about the starting of this engine.

Q What year was that when you got that business?

A We got that contract in December, 1906, the Fairbanks contract, the first business we got. The Harvester Company up to that time had not used any that I know of. And, continuing the development, in 1907 we brought out what was known as our trifurcated pole machine, our model 'D.'

Q What kind is that? Tripolated?

A Trifurcated.

Q Trifurcated?

A Tri-polar. That showed some very excellent results as a generator.

669 Q What year was that when you got that type of machine out?

A According to my best memory it was the first part of 1907, the early part of the year 1907, or the very last part of 1906. I think it was the first part of 1907. That machine was offered to the Harvester Company as a rotary machine with a cast iron bracket, carrying its own bearing. I proposed driving it by a sprocket and chain. Mr. Charles Longenecker was in charge of the work then for the Harvester Company.

Q Speak up a little louder.

A Mr. Charles Longenecker was in charge of the work for the Harvester Company at that time.

Q Yes.

A He was not very communicative on his developments until later on. In the winter or early spring, I don't remember which, of 1907, according to my best knowledge and remembrance, we were informed that he had made an attachment which promised to be a very good machine, a very good equipment.

Q What kind of an attachment was it, to do what?

A This was an attachment for carrying the magneto and for operating it. This was an oscillating type of magneto and the first one, according to my best knowledge, where one of my magnetos had been so operated.

Q You mean that Mr. Longenecker devised a way to use

your rotary magneto, transformed your rotary magneto into an oscillating machine?

A Yes.

Q Did you learn that your rotary machine had been transformed by some one into an oscillatory machine?

A As I remember, we were informed that. However, shortly after that, I went to Milwaukee and saw it in operation and on that occasion Mr. Webster went with me.

Q Saw what?

A This tri-polar machine mounted on a bracket. It carried 670 ried springs and had mechanism for operating it as an oscillating magneto. And on that trip Mr. Maurice Kane and I am quite sure Mr. Cavanaugh were also there while this was shown to us in the laboratory of the Harvester Company at Milwaukee, the engine laboratory. That is substantially or identically, identical with the machine that is there on the floor. I think it is—

Q Which one is it?

A I think it is Plaintiff's Exhibit 11, this one right here.

Q This machine? (Indicating).

A That is the type.

Mr. Peaks: Better have the reporter get the number of the exhibit.

The Witness: 11, I think.

Q Where those machines such as is embodied here in Exhibit No. 11 subsequently sold by the Webster Electric Company to the International Harvester Company?

A Only a part of it. You said Webster Electric Company, I believe. It should be Webster Manufacturing Company.

Q Webster Manufacturing Company.

A We made the magneto with the rotor and shaft.

Q Now, let me ask you, just what you include within the term magneto.

A That is the straight bar permanent magnets with the pole pieces and the windings on them and the brass spider that holds it together as a unit, together with the screws on the shaft and the part that oscillates. It is a multi-part structure.

Q Those are all the parts which have to do with the generation of the electrical current?

A That is it.

Q Or the electrical spark?

A Yes.

Q Except the contacts?

A Yes. The rest of the apparatus was made by the 671 Harvester Company.

Q What part of the apparatus was that?

A The part that furnishes the bearing, the arm for holding the outer end of the springs and the bracket that supports that, connected with those parts, also the trip finger—also the trip finger and the connecting rod.

Q What next was done after that, Mr. Milton, in connection with this development?

A Well, the next thing on that development that was connected with this particular type of engine came quite a long time after that. This machine promised to be very satisfactory. We felt that it was a solution at the time, and we furnished quite a number of them. I say quite a number, we actually got some business in 1907 and in 1908 it about doubled.

However, there were a number of complaints that came in from different causes. These complaints consisted of the thing failing to give the spark which was due to a number of individual causes; one of them was the fact that the rotor would drag.

* * * * *

The rotor would drag on the stator or stationary member.

Q Now, just show the court how that happened, what you mean by the rotor and the stator and the dragging of the rotor on the stator.

A This member here that moves is the rotor. It would go against these faces of the stationary member. This one seems to be afflicted with the same trouble. It is dragging now. That was due primarily to inaccurate machine work. The bearing for the shaft would over-size and not concentric with the boss that supported the magneto. It also varied in size.

Another trouble was the fact that the outfit being so heavy would shift on the supporting boss, which was an integral part of the cylinder wall.

Q Mr. Milton, will you look at this drawing and tell 672 me whether that illustrates in a fairly graphic sort of way the boss to which you refer and on which this magneto was mounted.

A The member that is marked 'boss' is the member I have just referred to.

Q Does that look very much like it?

A That looks like quite a good representation.

Mr. Bulkley: I offer that in evidence, marked Defendants' Exhibit 16.

The Witness: Some of the other troubles were caused by the fact that the rods that are extended from the push finger to the spark plug would get out of adjustment, either by use or by the operator tampering with it.

Mr. Bulkley: Q Now, what rod is that you refer to?

A This connecting rod.

Q Between the finger, the push finger mentioned and the rotor shaft?

A The push finger, yes. Here is the push finger.

Q Yes.

A Later on, other troubles—another form of trouble came in, which was the most serious, although they were not as frequent as other complaints, which was a breaking of the cylinder walls by reason of this weight and the strains.

Q Now, perhaps, Mr. Milton, you can explain that in connection with this drawing, Exhibit 16, if you will.

A This wall of the cylinder, the outer wall was rather thin. Between it and the main cylinder wall was a space which was for carrying the water for cooling the engine. That would vary in thickness and in strength as all gray iron castings do.

Q Well, what broke the wall, the outer wall? Why did that wall break?

A It broke as a result of these extra strains that were put on it. This little boss primarily was arranged to carry a little roller, and only a light roller, over which was guided the pusher rod for working the make and break electrode of the sparking plug which is mounted at the back, at the closed end of the cylinder.

Q In that case what kind of ignition was it?

A That was battery ignition

Q That is, this boss was primarily intended to simply support a light rod passing, an anti-friction roller, over which this light rod passed?

A That is what I attempted to describe.

Q Now, how many of those cylinders have been properly put out, engines containing those cylinders with a boss on the cylinder, by the Independent Harvester Company?

A The International?

Q The International Harvester Company.

A I didn't quite get your question.

Q Do you know of the fact that there were engines built by the International Harvester Company, engines that had been built and put into service, quite a number of them, on which there was this boss on the cylinder?

A I visited the works a number of times and always saw the works crowded with engines, a great number of them were of that type. So I concluded they had a large production.

Q Now, what was there, if anything, in connection with the trouble in changing from battery ignition to magneto ignition?

A Well, this magneto, this attachment, was made largely as an influence of the Crossley alcohol engine that I saw up there at the Harvester Works, which came from England, with a magneto on it that was operated by springs. I understood that they took some of those parts for developing this attachment for operating the magneto, and that magneto had a longer travel than was necessary with this type of magneto. That is, the rotating member had a longer travel, and Mr. Longenecker incorporated in this design—

Mr. Williams: I object, your Honor, to all of this testimony by this witness as to what Longenecker did. I think it clearly should be confined—

Mr. Bulkley: Q Do you know whether he did it or not?

Mr. Williams: —to what this witness saw and knows of his own knowledge.

Mr. Bulkley: Q Mr. Milton, will you just, in view of this hailstorm of objections, confine yourself to what you know Mr. Longenecker did, what he told you he did, or what did you see he had done.

A That was what I was doing,—just as I was saying, that was what I saw he had done. I understood that was why he did it. When he told me, or just the details of it, I can't say now. That is a long time ago. I know he designed it, this vertical arm on it that I was about to describe.

Q Go ahead.

A Onto the open end of the cylinder he bolted a bracket onto which was a bearing for supporting the vertical arm. The lower end of this was connected directly to the cam that operated the ignition. The upper end of it was guided over a roller, which is present in this Defendant's or Plaintiff's Exhibit 11, so as to make contact with the push finger. Now,

that—by reason of that vertical lever it reversed the motion. That necessitated changing the cam shaft which was supported in bearings. It had two cams on it and a little eccentric on the end operating the gasoline pump. The exhaust cam, that had to operate as before. The ignition cam had to operate at a point which would be displaced by 180 degrees. This necessitated a new structure in the form of this cam shaft, so that in converting the engine from a battery ignition to magneto ignition, which I believe is your question, it is necessary to put in a new or different cam shaft 675 complete. This was a rather difficult job.

Q Now, Mr. Milton, when was it that you left for Europe with Mr. Webster and Mr. Anderson, the patent lawyer?

A Alexander.

Q Alexander, yes.

A It was about the second week in July of 1907.

Q When did you get back?

A I came back the last of September of the same year.

Q What did you do, generally speaking? Just generally tell us what you did over there, what you went over there for, and what you did do over there, just very generally.

A Mr. Webster went over there to organize an English company for making the magneto which was, which he was selling here in this country, under the name of the Milton.

Q Of the what?

A Of the Milton magneto.

Q Is that a low tension magneto?

A It is altogether a low tension magneto.

Q Yes.

A At that time Europe was very much ahead of America in the application of magnetos to stationary engines and to automobiles. Again at that time there was quite a question as to whether the prevailing ignition on automobiles was going to be low tension or high tension. A number of cars in this country were using the low tension. On that trip we took with us a Locomobile which was regularly, commercially furnished at that time as a low tension ignition engine. It had mounted on it, which installation I made myself at Bridgeport Connecticut, a magneto that was substantially a duplicate to this. However, it was—

Q Exhibit 11?

A Exhibit 11, the magneto part.

Q Yes.

A On a cast iron bracket, carrying the bearing and was driven by a sprocket and chain.

676 Q Yes.

A And this car was taken over to exhibit the splendid performance of this magneto. Another object of the trip was to get the patent art on magnetos in England, France and Germany.

Q And did you make quite a considerable investigation of foreign patents in those countries, of the patents in those countries?

A I accompanied Mr. Alexander quite regularly on that and we went through the available art at that time.

Q Now, I believe you have told us generally and sufficiently with reference to what occurred in 1908. Have you told us all the improvements that you made in this machine which was completed before you went to Europe?

A Well, this—before we went to Europe? I think I have completed that.

Q Yes.

A That was in 1907.

Q Yes.

A In 1908, as these complaints commenced to come in, we started to make corrections on it, and some time in 1908 the Harvester Company loaned us a small four-horse power, horizontal engine, which I used for experimental purposes.

Q What part of 1908 was that?

A I rather think that was in the summer of 1908. That is as near as I can place it now.

Q Did you see H. J. Podlesak at that time quite frequently, along in the summer and fall of 1908?

A Oh, at that time Mr. Podlesak was connected with the Erie Motor Company, which was at 12th and Rockwell.

Q Quite close to your factory?

A We were at 15th and Western Avenue, and he made quite frequent trips over there.

Q You were quite close together, were you?

A We were quite close together geographically.

677 Q Go ahead, Mr. Milton.

A I was very glad to consult with Mr. Podlesak on that because of his very wide experience on engines generally, and particularly the Harvester line.

Q Gas engines?

A He having designed the Horizontal line of the Harvester Company.

Q Did you know then that he had been at one time in charge of the experimental department of the International Harvester Company at Milwaukee?

A Mr. Podlesak, as I mentioned before, is the first man I met at Milwaukee in connection with this magneto 'C.' He was the first man to refuse what we had to offer.

Q Now, coming down to the late fall of 1908, what seemed to be the difficulty and trouble with this magneto which was being constructed, which was being sold by the International Harvester Company in connection with those engines, its gas engines?

A The principal, the most regularly occurring troubles we found at that time, we thought at that time, could be overcome by good workmanship, by refinements, but when the reports commenced to come in, about the damage done to the cylinder walls, we knew that some sort of a change was necessary, and that was why we got the small engine, and I proceeded to make a different mechanism for operating the magneto.

Q Would that danger to the cylinder walls be increased by increasing the speed of the engine, do you think?

A Oh, it would bring the shocks closer together and more of them. It is bound to have its effect.

Q Why didn't you take your magneto off from the boss and put it somewhere else at that time?

A Well, that was the—the Harvester Company, I had found, would not make any changes for our magneto which we had asked them to do, because the Fairbanks Company had made the changes, had had their manufacturers to 678 make changes for us. They had out, I understand, so many thousands of engines that the question of repairs was a very serious matter, so that is what was, as we found at that time, the only available place for mounting these magnetos.

Q Did you ever talk that over with Mr. H. J. Podlesak?

A A number of times.

Q About making the changes in the mounting of the magneto on the engine cylinder?

A I talked that over with him before he had left the Harvester Company, and I thought that we were limited just to the place where they had started to install them. That is, where Mr. Longenecker had started to install them.

And my next step was to decrease the weight of the magneto and decrease the weight of the mechanism and get rid

of the special cam shaft that was necessary for operating the magneto, and I made a magneto of that type, a magneto and bracket of that type.

Q Now, then, Mr. Milton, you have given me a number of blue prints here, which I think you can probably handle better than I can (handing blue prints to witness). Tell us which one of these several blue prints show the first change which you made to overcome these difficulties.

A I have here a print, serial No. M101, Webster Manufacturing Company, which is dated November 27, 1908, which is one of a—which shows the details of one of the forms of these magnetos, and which was the first form that I made for a spring operated type of magneto.

Q What did you say that date was, Mr. Milton?

A November 27th.

Q What year?

A 1908.

Q Where did you get this blue print? Where did you get all these blue prints you have here?

A I found them in my files, my patent folder files. I want to use that.

679 (Objection to use of blue print and discussion between counsel.)

The Court: Mr. Milton, is that a correct copy of the first change you made?

The Witness: This a correct blue print of the working drawings of the mechanism as we made the first one.

The Court: That means it is a true copy?

The Witness: It is a true copy.

Mr. Williams: Of what?

The Court: Of the working drawing, the first thing.

Mr. Peaks: It illustrates the progress.

The Witness: This is the working drawing, yes, sir.

Mr. Williams: Q Did you make the working drawings?

A No, this is made by Mr. William A. Kroepelin. This is his initials there.

Mr. Williams: Did you see him make it?

A I was there when we were making the change. I recognize his initials, and I remember of having worked with him on this. He figured in this particular type quite regularly.

The Court: It may be admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit 17.)

Mr. Bulkley: Q Were you in charge at that time of this

magneto work which was being done by the Webster Manufacturing Company?

A I was.

Q As its chief engineer?

A I was in charge of the work that ordinarily comes under the, under the man who has that title.

Q Who is Mr. Kroeplin, that you have just spoken of?

A Mr. Kroeplin belonged to the regular, the main drafting room, was under the direct charge of a man by the name of Harry, of H. A. Smith, Harry Smith.

Q How did he happen to come over into your department?

680 A I went to his department, as a matter of fact, except when I wanted him to see some of the work we had done in the factory.

Q Did you have any other draftsmen under you or assisting you at this time?

A At this particular time?

Q Along in the year 1908?

A I had used a number of draftsmen in the main drafting room, and I had gotten to be more or less of a nuisance over there, because I was up-setting some of their regular work and I got, I afterwards got two men that were regularly under my charge on this magneto work.

Q Where did you get the authority to go over into the Webster Manufacturing Company and use their draftsmen? Who told you to go over there?

A Mr. Webster had it established around the factory there in the various departments that when I wanted work I was to get it, and I got it quite regularly.

Q What further did you want to say with reference to the character of the improvement which you had in mind in connection with this sketch number, or this blue print No. 17?

A This sketch, this drawing, this design, brought out the features, a number of new features, one significant one being the fact that a magneto operated with this mechanism did not require a special cam shaft or gear. We could get—this device could go on any of the engines out in the field that had been sold and in use without changing these parts, and the application was comparatively simple, compared with the installation of the Longenecker type of mechanism.

Q Are you referring now to the change from battery to magneto ignition?

A Yes, of course, they were all,—substantially all of them were battery ignition. Some of them were supplemented with little dynamos, but they were using batteries generally.

681 Q Why was it particularly desirable that that change could be made easily and readily?

A Because there was a big demand for an ignition, a dependable ignition apparatus that would get away from the batteries, because the battery gave a great deal of trouble.

Q I asked why was it particularly necessary that there should be a readiness of change from one to the other?

A Well, because it was such a big—was formerly, with the Longenecker type, was a very big job to change the engine from the battery to the Longenecker apparatus. Then again it became necessary to change from the magneto back to the battery. That was another big job.

Q In the field?

A In the field or any other place it was a big job and a particularly big job in the field.

The next feature of merit in this design was the fact that the weight of magneto itself was reduced. This brings in the magneto with the rounded pole pieces, that is, end members. And the bracket itself was very materially reduced in weight.

Q What is the member that you refer to as a bracket?

A That is all of this supporting mechanism.

Q For what? Supporting mechanism for what?

A Supporting the magneto and the mechanism for operating it, the springs and all. This design did away entirely with the cast iron supporting arms that we have here in this device, because the springs were carried at the outer end of the pole pieces. This brought the pusher rod which formerly connected with the movable electrode of the battery, the make and break mechanism, right in line with the finger which moved the rotor in a rotative motion. We have on that a little tripper device or dog so the thrust was direct. So that explains why it was unnecessary to change the cam.

Q Now, in making the patterns and castings and such machine work, was that all done under your direction?

A It was regularly done under my direction. I had
682 had it established—

Q By whom?

A I had it established that no new work could be taken on without my passing on it, because I was in a position to know what was of relative importance, and I paid very con-

siderable attention to the pattern work, the foundry work, and the machine work to be sure that the designs took care of all those features.

Q You say you had it established. How was that established?

A Well, through the cooperation of Mr. Webster, who had it understood that I was directly in charge, and these things had to be referred to me and they were referred to me quite regularly. At that time Mr. Munn was in charge of the magneto department. By magneto department I mean the department where we did most of our developing work and the assembling of most of our magnetos. The parts were made in different parts of the factory. The stampings were made in a department under a man by the name of Peterson and the machine parts were made in a department by a man by the name of McCarty, and the cast iron parts were made in the gray iron foundry, which was a very big one, which was under the direct charge of Mr. John Anderson. So I was in direct charge with all of these different departments.

Q What was the next step or improvement that you made, if you are through with this other?

A On this machine, this machine we installed on the four horse power engine that the Harvester Company had loaned to us, and it developed a feature that had not shown up in this other equipment, because these other equipments had not gone on the higher speed engines. They had gone on the six-horse power and above, as I remember. I don't remember them being on a smaller engine than the six. This small engine is quite a good deal higher speed and we found that it would start very nicely and get up to a certain speed and then commence to miss and fail to fire the charge, and there is quite a clashing of the parts; that is, the tripping mechanism parts. About that time Mr. Podlesak came along and 683 he looked the thing over. I showed it to him.

Q Showed what to him?

A Showed him just the four-horse power horizontal International Harvester engine, equipped with one of these devices with a single link mechanism mounted on the boss.

Q Which Podlesak?

A Harry J. Podlesak; and with his usual characteristic capacity of analysis he told me immediately what the trouble was. He said the moving parts were too heavy.

Q Just talk a little louder.

A He said the moving parts were too heavy. He told me that could be improved by reducing the weight of the rotor. He suggested my taking that out and drilling holes in the middle, and having the material filed out of it, which we did. We also reduced the weight of the nut which corresponds to the nut on the end of this machine and we set it up and the thing functioned beautifully.

Q Have you got a blue print which shows the change he made in the rotor?

A This blue print we have here shows the changes in the inductor, the rotor member, but it does not show the nut.

Q It shows the cutting of the centers out of the rotor?

A It shows the centers have been removed.

Q The stampings?

A Yes, sir.

Q But not the change in the nut?

A Yes, you can see it very plainly on the center part of the main figure. This is a rotor.

Q The figure in the upper left hand corner of the blue print?

A Yes.

Q Now, tell us what sort of a blue print that is, a blue print of what, speaking generally?

684 A This is a blue print of the details, of the parts that enter into the magneto, the bracket and mechanism for operating it, with the exception of the square rod that connected with the engine and the igniter rod which connected the magneto with the igniter. It is a working drawing giving all the necessary dimensions.

Q Do you know who made that drawing, the drawing from which that blue print was taken?

A According to my best remembrance it was Kroeplin that made that, because we worked together a great deal at that time.

Q Well, whoever made it, who gave the instructions to make it?

A They made it—whoever made it, made it under my instructions because I remember the various steps as we progressed in that design.

Q Now, take up your next blue print that you have there, I understand, showing the succeeding change.

A That device—

Q Was this one, this magneto which is here, of which this is a detail drawing ever sent to Milwaukee?

A I don't recall whether that was or not, that particular one. Because it was not long before I found that a change was necessary in that design.

Q Now, go on and tell us what change was necessary to be made.

A The change that was necessary was the fact that even though the machine, the magneto and its mechanism had been materially lightened, the magneto, in the event that it would get out of adjustment, would not function properly, because the pusher rod would—the errors—because the tripper mechanism on the pusher rod with the finger would not make proper contact, it being so far out that a slight movement of the boss would multiply the errors. So I developed what

I called a double length machine, carrying two of the 685 lengths instead of one that is shown on that. In fact, the change was in that it had a compensating feature so that the magneto on its bracket could go quite a little bit out of its former setting and still it would take care of itself on the adjustment and would not affect the tripper mechanism to which I have just referred.

The magneto itself developed a wave of current that was of sufficient duration to give me current over a period of degrees of the rotor's oscillation, which would take care of quite a bit of error between the pusher finger and the trip finger or the movable electrode through the connecting rod. So I thought that that was taken care of, that this new design would take care of the important points, the important point which was a machine which would go in the field and be installed on any of the standard horizontal engines, and which could be readily attached and that could be adjusted at the factory, and when so adjusted it would require very little adjustment out in the field and it did not require any change in cam shafts. I have blue prints showing the general installation of that, the timing of these parts in their various positions, which is Webster Manufacturing Company tracing entitled 'Diagram Showing Timing of Milton Magneto on I. H. C. Engine, Chicago, January 19, 1909.'

I also have a blue print of the details, which is a working drawing of the parts that enter into this magneto and the bracket and the mechanism for operating it. This magneto, this drawing is not dated.

Q Were those two drawings, or were the drawings from which these blue prints were taken, made under your directions, in accordance with your instructions?

A They were.

Q Do you know who made them, or either one of them?

A The paler one you have there showing the timing was made largely by the—

686 Q That is the one with the—it is not marked with a date.

A That is dated.

Q Is it?

A Yes.

Q Dated what?

A January 19, 1909.

Q Now, that one, what were you going to say about that?

A It is my remembrance that Mr. Kroeplin made the principal figures on this drawing.

Q Does that blue print correctly represent the correct copy of the original from which it was taken?

A Quite accurately, quite accurately.

Mr. Bulkley: I offer it in evidence and ask that it be marked Defendant's Exhibit 18.

(Objection—overruled.)

Q Was the original drawing from which this drawing that you have been talking about is taken, was that made under your direction and in accordance with your instructions?

A It was.

Q And who made that, if you remember?

A According to my best remembrance, all these details were made by Mr. Kroeplin.

Q Is that a correct copy of the original drawing?

A I would say it was substantially so, if not absolutely.

Mr. Bulkley: Offered and marked Defendant's Exhibit No. 19.

(Objection—overruled.)

Q Were machines made,—or magnetos made, of this two-link type?

A According to my remembrance we made one which was our first experimental machine and put it on the same little engine to which I referred, the horizontal International Harvester Company engine. And then another one with which we made exhaustive experiments on that; I believe it was made exactly in accordance with the details as shown
687 here; and that one was sent to the Harvester Company at Milwaukee, as we had every belief that it solved the problem, and we expected to get some business from it.

Q Who took that, if you remember, to the Milwaukee works of the International Harvester Company?

A Mr. E. J. Kane and William Kroeplin.

Q Did you tell them to take it up there?

A I did.

Q What became of this little engine that you had there experimenting with and which had been sent to you by the International Harvester Company?

A The Harvester Company had made a number of inquiries about it, whether it was the works of somebody that had it on their card and responsible for its return I don't remember; so when we had this design finished and thought that we would very shortly be getting business from them, I thought we were through with the engine, so the next time they inquired about it I was willing to let the engine go. The next thing I remember about it was that one of the employes of the McCormick Works, a man by the name of Merwin, George Merwin, had bought it, and he came over to the Webster Manufacturing Company plant in Chicago to look at it, and we had this attachment on it. I remember of his coming over to me, and I took him out to the room where it was located, which was the old engine left on the first floor of the old Webster Building, and in which—and which room was also a sheet metal shop. The engine was run for him and I showed him how it operated. I remember he seemed to be very pleased with it, and the engine was taken away with that equipment on it. It was my understanding—

Q Never mind about that. Did you have any talk with Mr. H. J. Podlesak before that engine was taken away with reference to the magneto and its development, and the manner of mounting on the cylinder?

A Yes, a number of times.

Q I mean, in connection with that particular engine?

688 A Yes, sir.

Q That was taken away, that which Mr. Merwin came to see you about?

A Yes.

Q And which you showed to him?

A Yes, sir.

Q What did you talk about?

A We talked about the mounting and the mechanism.

Q When you say the mounting, what do you mean?

A The bracket, and the mounting of it on the boss.

Q Of the cylinder?

A Yes. To see if— To consider the question as complying with all of the objections and requirements as set forth by the Harvester Company.

Q Did you talk over the insecurity of the connection of the magneto on the engine cylinder?

A We had had that under consideration, and I had hoped with the very material reduction—

Q What did you say to Mr. Podlesak and what did he say to you?

A Well, the substance of the conversation was that I believed that having the direct thrust right directly to the magneto push finger overcame the objection which I spoke of regarding the cam shaft, and the very material reduction in weight which would occur, the material reduction in weight,—

Q Of the magneto?

A —on the magneto and its bracket I thought would then be such that this boss would withstand the work that would be loaded or imposed upon it; and I said that it would help the thing if we could get the waterjacket on that cylinder wall reinforced, and I asked him—

Q Reinforced where?

689 A On the underneath side of it. I asked him if he thought the Harvester Company engineers would countenance the thickening of that wall.

Q At what point?

A At the junction of the boss with the—through the walls, would require thicker walls. He didn't think they would do it, at least he didn't think he would do it if he were still up there, because it meant not only a change in the wall but interfering with the water circulation, and further it meant, he thought, that it might affect the foundry proposition by producing a porous casting.

Well, it was at that time particularly,—whether at that particular time or not I don't remember, but he proposed that we would take the—that we take it up with the Harvester Company engineers and get them to extend a pad which was already on the cylinder wall to turn the magneto mechanism so that when they milled off that they also milled off a little next to it, and that would give us a flat surface on which we could bolt this mechanism close to the spark plug.

Q Of the mechanism?

A The double link.

Q The magento?

A Yes, the mechanism carrying the magneto.

Q Just look at this drawing and see—

A He said he would do that if he were still in charge up there; I remember that.

Q (Handing document to witness.) Let's see if you think that is what you understood him to say at that time.

A That is what I understood him to say at that time.

Q Just explain that.

A On this drawing, which is Defendant's Exhibit 16, we have a circular boss, right there at the plug opening, 690 which is shown in this next drawing, an extension of that.

Now, as the milling machine would go across this plug opening, he said it would also sweep off this extension that was proposed and that would give us a very secure, solid place on which to place the mechanism carrying the magneto.

Mr. Bulkley: The illustrative drawing submitted by the witness is offered in evidence as Defendants' Exhibit 20.

Q This suggestion was made, was it—

Mr. Williams: Are these drawings introduced as merely illustrative? They are not supposed to have been—

Mr. Bulkley: That is all.

Mr. Bulkley: Q When was this suggestion made with reference to the time that the Merwin engine was taken away?

A It was prior to its having been taken away.

Q Was any other suggestion made by either you or Mr. Podlesak prior to that time with reference to the way in which to fasten the magneto on the cylinder?

A It was just at that junction, and with the Merwin engine still before me, that the proposition of making a bracket carry the mechanism for operating the magneto and the magneto itself, with an extension on this bracket which would be the igniter plug, took form in my mind; that was before me when the first combined structure formulated itself.

Q Did you say anything about it at that time?

A According to my best memory, I talked to Mr. Podlesak about it before the engine was taken away; that was Mr. Harry Podlesak, I didn't know Mr. Emil Podlesak at that time.

Q As far as your present recollection permits you, would you say— What was it that you told him at that time with reference to this feature?

A That we would use the bolts that formerly held the igniter mechanism for holding this whole mechanism, which

was a double link mechanism with the igniter plug, all in one single thing.

Q What is the double link mechanism?

691 A That is as shown, a double link mechanism, for operating the magneto, and also for holding the magneto.

Q What do you include within that term when you say the double link mechanism?

A Well, that includes the bracket for supporting the magneto, the magneto mounted on it, the rotor, the rotor shaft, the trip finger, the links for guiding this little trip finger, and the little lever with the shaft in it for the advance and retard of the spark. That was all in this double link mechanism. The proposition was to secure that with these two bolts and at the same time extend that bracket and put into this bracket the igniter plug part.

Q What two bolts did you refer to?

A The two bolts that would normally go into the two holes as shown on this—

Q The two holes of what?

A There were two bolts for holding down the igniter mechanism which was very large and very strong and ample to carry this whole load that we are proposing to put on it.

Q The two bolts that hold what on what?

A Hold the igniter mechanism on the cylinder walls.

Q Yes?

A I thought that was understood.

Q Now, tell us as clearly as you can in connection with this model what you mean by the bolt that held the igniter on the cylinder, and what you call the two-link mechanism and how you suggested it, that one should be held on the other and on the engine cylinder.

Mr. Williams: Let me understand. Is he asked to tell what was said to Podlesak, or what was in his mind?

Mr. Bulkley: Well, we will put it what he had in his mind and then we will ask him what he told Podlesak.

Mr. Williams: I submit, your Honor, that what he 692 may have had in his mind is wholly incompetent.

The Court: It wouldn't amount to anything unless it were followed up, of course. Go on. That will be disclosed.

The Witness: The igniter mechanism—

Mr. Bulkley: Q Just tell what it consists of.

The Witness: (Continuing)—shown here in Exhibit 11-A

has two large holes in it, through which bolts passed, which in turn secured it to the cylinder wall. Now, the idea, as it was in my mind and as I discussed with Mr. Podlesak, was to take the bracket as shown in Defendants' Exhibit 19 and incorporate those two in one member.

Q Will you mark in some way the bracket so we can know what that is, to what you refer in that blue print as a bracket?

A Well, it is the second figure from the left hand corner.

The Court: At the bottom?

The Witness: At the bottom. I thought there was a name on it. This is a plan view directly over this figure.

Q What did you mean by 'incorporate these two,' what two?

A Make it into a single—

Q Besides the bracket, what else were you going to incorporate with the bracket?

A As I described, we were going to make a single casting that would carry substantially the same bracket which would carry the link mechanism, carry the magneto, and also the electrode which would extend into the cylinder.

Q What did you do about this suggested thing after that?

A Nothing was done immediately because I had every hopes that—

Mr. Williams: I object, your Honor, as to the 'because's'; that is not competent.

The Court: No. 'Nothing was done immediately'; stop there.

The Witness: Nothing was done immediately.

Mr. Bulkley: Q Why did you not immediately incorporate that structure physically and test it out?

693 The Witness: We had submitted to the Harvester Company a double link machine which we had been testing for quite a while on the block, and which had performed very splendidly and which I believed overcame all of the objectionable features, and I was in hopes and Mr. Webster seemed to share that hope with me, that we would get business from the Harvester Company at that time, on this particular design.

Q Well, what happened next? Your particular design, what one was that?

A This particular design, the double link machine. Well, about that time I remember a complaint came through from the Harvester Company. We got these complaints quite regularly; they sent us copies of the Engine Works com-

plaints. This complaint, I remember, made a very distinct impression on me, because it came from Mr. Couchman who was in charge of the Continental business of the Harvester Company and was located in Hamburg; and he stated in this complaint that an engine had broken the cylinder wall open while this engine was being transported by a horse and wagon, in Belgium. That made a very distinct impression on me. And the next thing I remember in connection with this work was that we got word, either written or oral, that we could not use this boss at all.

Q From whom did you get those instructions that the boss could not be used at all?

A I do not recall at this time just how that came. I remember that we were forbidden to use that boss.

Q For what purpose?

A For mounting the magneto.

Q Then what happened next?

A Then the next work— The next thing that happened, Mr. Webster took up with me in very seriousness the situation, and talked to me very seriously about it and seemed to be very much worried, we were about to lose the Harvester business on which we had been working—

694 Q Did he tell you all this?

A Yes, sir. We were then on the edge of losing all this business.

Q Did you talk over with him the fact that you could not use the boss any more?

A Yes, that was—I think the information came through Mr. Webster. According to my best remembrance, it came from Mr. Webster.

Q Just tell us all that occurred between you there at that time.

A When Mr. Webster talked to me so seriously on this subject, I told him I thought we could still do something because I had in mind at that time the other type that Mr. Podlesak and I talked over.

Q What one was that?

A That was the combining of the whole thing into one structure and putting it on the big, strong bolts back of the cylinder; that is, building a magneto with its supporting bracket, its mechanism, double link, and carrying the electrodes.

Q Building them how? Doing what with them?

A I said in one structure. I put that in the first part of my statement; I remember it.

Q And fastening it to the engine how?

A And fasten it into the engine with these big, strong bolts. And Mr. Webster said,—I don't remember his words exactly, but the instruction was to see how quickly we could to it, or if it could be done. So I started to work on that, and at that time Mr. Webster had given me Mr. Chiville who was doing my high tension development work, and I had Mr. E. J. Kane to do my low tension work; Mr. Kane had been with the company then several months, he having come there in the latter part of 1908, in the Fall of 1908, and had been working around there, and I found he could make drawings and he had made some drawings under my instructions, and I remember giving him that problem to do.

695 Q What did you say to him?

A To take this double link machine and extend that bracket so as to form the spark plug for holding the electrode, and put in the insulation, and making up the mechanism, as I remember it. That was my instruction and I remember him starting on it, and I remember his making a couple of sketches on it which were study sketches, without getting the thing down to a final meeting place. There was one series of operations—

Q What did Mr. Kane do?

A He started to work on these designs, and he was working at that time upon the fifth floor, and there was a little tool room that had been vacated—~~on~~ some months before that. He made the drawings, under my instruction, and which I watched, each stage, because I was very keenly interested in it because I was very hopeful of solving this problem. I always believed that the low tension machine would be the first one that we could get material business from.

Q Where did this interview occur with Mr. Kane, if you remember, when you told him what you wanted him to embody in the drawing?

A I cannot say definitely whether it was down stairs or up on the fifth floor, but I am inclined to think on the fifth floor because I spent most of my time up there.

Q About when was it, what time of the year?

A Well, since I have looked up my records and different letters and drawings in connection with it, and it takes form in my mind it was in the Spring of 1909.

Q With reference to the time when the engine, the Merwin engine, was taken away, about how long after that was it?

A The Merwin engine had been gone a number of weeks; I don't know how long, when we got the information that we could not use that boss.

Q To refresh your recollection, do you remember anything about a letter from Waterman, of March 15, 1909, which is in evidence here?

A I have heard that letter referred to a number of times, but I cannot positively—

Q Did you see that letter at that time?

A I don't recall whether I saw it or not, but I remember distinctly the substance of that letter; whether it came to me, the letter itself, or I got the information, I can't say, but I got the contents.

Q I show you Plaintiff's Exhibit 17; did you ever see that drawing before?

A I have no way of definitely identifying this drawing, but I remember very distinctly the idea as portrayed here as being one of the forms that were discussed in connection with this development work to which I referred.

Q What development work was that, Mr. Milton?

A The building of the mechanism, the bracket, the sparker, and sparker electrode, into a single structure.

Q And how mounted on the engine?

A Mounted on the engine with the two bolts which formerly held the spark electrode. These are the two bolts; the arm coming here, coming around here. One of the studies that preceded this came immediately around and made a box structure, which was very bad from a foundry standpoint; it was very difficult to machine. This one here has some of those objections. The magneto is shown here, and this whole thing is of a reduced size. This one had another objection to it, I remember it, this extension here, back under towards the closed end of the cylinder wall; on one type of the International Harvester Company horizontal engine was an exhaust pipe, according to my recollection; it was known as their famous Hopper Cooled engine; the exhaust pipe went up, I remember we made the change—

Q Who made that drawing, Mr. Milton?

697 A This is a tracing, made from—evidently from a drawing—

Mr. Williams: I object, your Honor, as to what may be evident; we can conclude as to that.

The Court: That is not the question. Who made it? The question is, who made it?

The Witness: Who made it?

The Court: Yes.

The Witness: Who made—

The Court: That particular paper?

The Witness: According to my best remembrance, Mr. Kane made this tracing.

Mr. Bulkley: Q How did he come to make it?

The Witness: Well, how he happened to come to make this particular tracing I don't recall, because our lay-out work had been done on other form of paper.

Q What do you refer to as the other lay-out work?

A In making drawings we generally use a— In fact, it was almost without exception, we used a grade of paper that would stand very considerable erasing, because we never knew when we would put down a line how long that was going to remain, because we were making changes and getting the ideas worked out so as to meet the various conditions of machine work in the foundry and assembly and installation, and so on.

Q Were such other lay-out drawings as that made?

A They were.

Q Do you know whether it was prior to this tracing, as you call it, or drawing or whatever it is, No. 17?

A I should say it was prior to this.

Q And who made some or all of those drawings, those lay-out drawings?

A Mr. Kane made them, under my instructions.

Q Did you ever see this drawing, Plaintiff's Exhibit No. 18?

A I remember the idea as shown here very plainly. I 698 have no direct way of identifying this particular drawing.

Q What idea do you refer to, Mr. Milton?

A The structure of the plug, and bracket and mechanism and all, in their relations to each other. This looks like the original study drawing, although it is not a complete one.

Mr. Williams: I object, your Honor, to these speculations as to what it looks like and so on. He says he can't identify it, can't remember it.

The Witness: I remember the idea very definitely; I remember the type of machine very definitely. The physical piece of paper itself I do not identify, and I have no means of doing that. This does not show the idea completely; it is

a study drawing,—in other words, it is not a working drawing.

Mr. Bulkley: Q Do you have any recollection as to who made that drawing?

The Witness: E. J. Kane, or substantially the same thing; I know he worked on that idea under my instruction at that time.

Q Mr. Milton, did you ever, while with the Webster Manufacturing Company, make any drawings yourself in connection with the development work with which you were engaged?

A I did some drawing; I did not do it regularly. I did a little of it. I regarded my time as being worth too much to make complete drawings.

The Court: You turned it over to a draftsman after having given him the idea?

The Witness: Yes, sir, your Honor; and frequently making sketches in guiding him.

Mr. Bulkley: Q What is this blue print which I show you now?

A This is a blue print of the working drawings of a structure of plug, bracket, working of the magneto and the mechanism for operating the magneto; it is a Webster Manufacturing Company drawing, a detail of Type B 2 open magneto for I. H. C. horizontal engine; such is the name on the lower left hand corner, and bears date of June 3, 1909.

699 Q Who made the drawing of which that was a blue print, do you know, Mr. Milton?

A I know—I want to modify that: I have every reason to believe that this is—that this print is from a tracing that was made by Mr. Kroeplin, and also that he made the drawing from which the tracing was made.

Q Who was Kroeplin working for at that time?

A He was in the Drafting Department under Mr. Hiram A. Smith, and Mr. Smith would turn him over to me for these special drafting jobs.

Q Did he work for you in connection with this combination of the plug and bracket?

A Always.

Q And magneto?

A When doing my work he always worked directly under my instruction.

Q I say, did he in connection with this—

A Yes, with this work.

Q And as to this particular tracing to which you have referred—

A This particular drawing, I remember our having worked on this together, but he was doing the actual drafting and as usual I simply superintended it.

Mr. Bulkley: That blue print is offered in evidence, marked Defendant's Exhibit 21.

Q Did you have anything to do with the embodiment of the structure shown in these drawings in actual mechanical form, and if so, what?

A I watched over that development very carefully, to make sure that the design not only accomplished the desired result from the standpoint of the operation of the engine but also to get a type which could be made in a foundry 700 without serious objection from the foundry, a type that could be machined readily and at low cost. I remember having discussed those points with the various men in charge of the work that that naturally fell on. In this particular design I remember distinctly talking to Mr. Munn regarding the machine points of it.

Q Going back a little, Mr. Milton, tell us if there is anything more with reference to talks you had with Mr. Kane about particularly that form of device which is shown in his tracing or drawing Exhibit No. 17. Did you tell anything about that?

(Objection—withdrawn.)

The Witness: I think I can answer to this drawing, or a duplicate of it or from sketches. When we got to this stage, which incidentally this design resembles very similarly the features as shown on the original single link machine; we came up with the pusher rod from the cam shaft direct on to the link; this link has an extension on it, however, which directly engages with the trip finger of the magneto which is also present in the other machine. And the next thing I remember in connection with this was to get rid of this arm that came around here at the back, because, as I said, there was one type of Harvester horizontal engine where that would interfere. And I remember, to get rid of that I proposed putting it down underneath, fastening up across, which is substantially what we have in our structure, as you see here in some of these models; I have reference to the one on that demonstrating stand.

Q Which one is that?

A The one under the blue print. The one that Mr. Carter has his hand on. We put that yoke underneath, taking it from the end towards the closed end of the cylinder and putting it down below.

Q Will you just tell us what was the particular kind of construction there shown and what criticism you made, if any, with reference to it as a foundry proposition?

A Well, I have referred to the foundry proposition, and this being a little bit awkward and which could be improved by changing the position of some of these parts, and in even this one it is better than our first one; that is, easier to make.

Q Did you talk with Mr. Kane?

A I did.

Q Anything about—

A This one.

Q —the form of construction which is shown here in plaintiff's Exhibit 18?

A I remember working with Mr. Kane on this design, as it progressed.

Q Did you have any criticism of that form, or type there, of embodiment there illustrated in Plaintiff's Exhibit 18, and if so, what, which you made known to Mr. Kane?

A Well, it is my remembrance that when we got to this stage of this study drawing, that it was turned over to Mr. Kroeplin who made the working drawings there so we could make one of them, because we could not have made one from this drawing.

Mr. Williams: You could or could not?

The Witness: Because we couldn't.

Mr. Williams: Could not?

The Witness: Could not. It is not a finished drawing, and there are no dimensions on it. Strictly a study drawing. That is, I want to modify that and say that in using the class of help that we were using at that time.

(The examination of the witness Milton was temporarily suspended.)

Mr. Bulkley: Mr. Merwin, will you take the witness stand, please?

702 GEORGE MILES MERWIN, called as a witness on behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. Bulkley.

Q What is your full name, Mr. Merwin?

A George Miles Merwin.

Q And where do you live?

A 3316 Harold Avenue, Berwyn.

Q What is your present occupation?

A Designing engineer, International Harvester.

Mr. Williams: Q For what?

A International Harvester Company.

Mr. Bulkley: Q What works are you connected with?

A McCormick.

Q Were you connected with the International Harvester Company in 1908 and 1910, or with the McCormick Works?

A I was connected with them in 1908, and from the first of October, 1910, on. Before that I was not.

Q Do you remember anything about going down to look at an engine, at the Webster Manufacturing works?

A Yes, sir.

Q Why did you go down to see that engine?

A Because I was leaving the employ of the Harvester Company, going to a farm in Oklahoma; and I went to see that engine, to buy it, and wanted to see whether it would be suitable for the purposes for which I wanted it.

Q Who told you that it was at the Webster Manufacturing Company?

A Mr. Cavanaugh, the Assistant Manager of our Experimental Department.

Q And did you see the engine?

A Yes, sir.

703 Q At the Webster Company's plant?

A Yes, sir.

Q Do you remember anything of what happened at the time you saw this engine?

A Why, I went, as I recall it, to the offices of the Webster Company, and they sent me out with a gentleman, and I looked at the engine, and he started it up for me, and operated it.

Q What was done with that engine?

A I bought it.

Q And then what was done with it?

A I loaded it,—it was delivered to the McCormick Works, and from there into a car which I had chartered, and loaded with household goods, and was shipped to Elgin, Oklahoma.

Q When was that?

A The last week of January, 1909.

Q You have a distinct present recollection of it at this time?

A Well, I was in Oklahoma, and bought a team of mules, on the first day of February, 1909, and drove that team of mules to Elgin, and there unloaded my car of goods, and took them out to the farm.

Q Was this engine in that car?

A Yes, sir.

Q And did you unload it?

A Yes, sir.

Q And take it over to the farm?

A Yes, sir.

Q At that time?

A Yes, sir.

Q What kind of an ignition did it have on that engine?

A It had a magneto.

Q Did you have any conversation with the one who showed you that engine, at the time, and operated it for you at the Webster Company, with reference to the magneto?

A I discovered that the engine was not operating by battery ignition; and I stated to him, 'If I take this engine of course this magneto will go with it.' He says, 'Yes, that will go with it.' And that is the way I got the engine. I also at the same time got all the batteries and parts for regular ignition, providing the magneto did not work always.

Q Were you told what make of magneto that was on the engine?

A I do not recall. It seems to me there was a name on the magneto, but I would not say positively.

Q Do you think you would be able to identify the person who took you out to this portion of the plant?

A I do not believe I could.

Mr. Bulkley: Mr. Milton, will you stand up for a moment?

(The witness John L. Milton stood up.)

Q Can you identify this gentleman standing up, as the one who took you about?

A Well,—

Mr. Peaks: Not who took him about, but who talked with him about the magneto?

Mr. Bulkley: Q Who took you to the magneto, and operated it for you.

A There is a little bit of a familiarity about his appearance, but I could not positively identify him. As I recall it, there were two men,—one that seemed to be a helper, and another one that knew what he was doing and showed me the engine, and started it up.

Q What was the size of this engine?

A Four-horse International horizontal engine.

Q Are there any other distinctive features of it which you could give, enabling us to identify it in any way, other than that, or any addition to what you have already given, as to its horse power?

705 A What do you mean? About the engine?

Q Yes, sir.

A Well, this particular one, the magneto, I could, I think, identify one similar to it. It was just an ordinary gasoline engine, water cooled; and had a large tank.

Mr. Peaks: If I may be pardoned for asking a question,—When you see the gentleman that stood up here, is there anything in his appearance that negatives to your mind the thought that he may have been the man you saw?

A No, nothing either way, either negative or positive; I might have seen him there, and I might not.

Cross-Examination by Mr. Williams.

Q You said, Mr. Merwin, that you could describe or identify the magneto equipment which there was on this four horse power engine that you bought. Will you describe that?

A Why, it was a square box affair, pivoted on a stud, and as the eccentric worked it operated against a lever that worked on some springs, to get the spark.

Q What do you mean when you say it was a square box affair?

A Well, the frame-work is square.

Q Like this machine that I show you, and which is marked Plaintiff's Exhibit No. 11?

A Let me look, just a second.

(Witness examines exhibit.)

A Yes, very similar to that. I recall it, because it had a set screw here (indicating); and after I had had it a while it bothered me a little bit, by not getting as hot a spark as I wanted, and I discovered that this set screw here was loose (indicating); and I set the magneto, by starting up the engine, and leaving the set screw loose, and holding this in different positions until I seemed to get the most power 706 from the engine (illustrating); then I stopped the engine, and tightened the set screw.

Q How did you determine whether you were getting the most power from the engine?

A By actual work,—speed of the engine.

Q Doing what kind of work?

A Grinding corn, and cobs, and shelling corn, and husking.

Q So you jiggled it around, until it seemed to husk the most corn, and then you tightened up the screw to hold it there; is that it?

A Well, I would not just express it that way. I gave it the proper adjustment.

Q Well, you did it by seeing how much work the engine would do, and then trying to hold it there?

A Well, I found this,—that my engine was not developing the same amount of power that it had been, and naturally I looked to find out what was the cause, and I discovered that this set screw was loose on the magneto, and I could not recall just exactly in which position,—which the position was, in which the magneto was sitting on the engine, and to determine that I started the engine, and then I held it just as solid as I could hold it (illustrating).

Q With your hands?

A With my hands, yes, sir. Of course it would give me a spring and rebound every time the magneto worked, but I was able to determine in which position the engine seemed to work to the greatest advantage; then I stopped the engine, and tightened up the screw, and started again, and, as I recall it, I possibly did that two or three times.

Q You mean two or three times, until you got it so that it seemed to be satisfactory?

A Yes, sir.

Q How long did you operate that engine?

A I sold it in September, 1910, at an auction sale.

707 Q You had it a little over a year, then?

A Well, I used it possibly,—practically two seasons; I had it nearly—I used it possibly a year and a half, I would say.

Q Now, the square box like part of the magneto to which you referred in first describing it, as I understand it, is this—

A Frame work.

Q Square frame work, here (indicating on device)?

A Yes, sir.

Q Including these permanent bar magnetos, and the coils?

A Well, I—

Q At least, it is that part that caused you to designate it as being—

A A square box.

Q A square box affair?

A Because I used the top of that to sight over the top of my cylinder, to see whether it would be level with the cylinder or not.

Q That is, in trying—

A Yes, sir.

Q —to maintain it in adjustment?

A Yes, sir.

Q So that it would give the power?

A Yes, sir.

Q And that, as I understand it, is the form of magneto which you saw on the engine there at the Webster Manufacturing Company's plant, when you went to look at it first?

A Yes, sir.

Q That is all. By the way, when you say that that was delivered to you, or at the McCormick Works,—as near as you can recall, in the last week in January?

A Yes, sir.

Q How long before that was it that you first saw the engine there, when you were considering buying it?

708 A Oh, possibly a week; something like that.

Mr. Williams: That is all.

Mr. Bulkley: Just a moment, Mr. Merwin. Where is the one you showed him (addressing Mr. Williams)?

Redirect Examination by Mr. Bulkley.

Q How much of this machine do you remember, which will enable you to identify it as the one which was on that engine (indicating device)?

A Well, this part in here (indicating) looks familiar, these springs here; and this part over here I would not say so positively about; but I recall that there were the two coil springs in here, or, coil springs, in there (indicating); and the center here.

Q The rotor?

A Yes, sir. I do not know what you call it.

Q The rotor, and—

A I know it was pivoted on a stud.

Q And are those all the features of this machine which you now at this late date remember as characteristic of the engine, or of the magneto on that engine?

A I cannot say positively. I remember there was a casting on there that was made of brass, that ordinarily would be made of malleable iron. And it seems to me this part right here is something of that (indicating), and yet I would not say positively.

Q And those are all the features that you can now remember, are they, as to—

A This (indicating)—well, I would not say positively, but it seems to me there was a spring, or a rod like that; but it has been so long that I would not want to say positively.

Mr. Williams: Let me get that in the record.

Q When you refer to the spring or 'rod like that,' you mean this five-sixteenths inch rod here (indicating)?

A Yes, sir.

709 Q About eight inches long?

A Yes, sir.

Q With the coiled helical spring around it?

A Yes, sir.

Mr. Bulkley: I think that is all.

Recross Examination by Mr. Williams.

Q The first part that you named as one that you could identify, in answer to Mr. Bulkley's question, was this piece that I turn here, was it not (indicating)? That is, you took hold of it, and said, 'This'?

A Yes, sir.

Q And—

A As I recall it, there was a four-point device there, that worked back and forth, with a jumping movement.

Q That is, this rotating part?

A Yes, sir.

Q About three and a half inches in diameter?

A Yes, sir.

Q Of laminated iron or steel, apparently?

A Yes. These parts here (indicating) do not seem so familiar to me, and yet seem as though they must have been there, too.

Q These (indicating)?

A As I recall,—this part in here (indicating).

Q When you say you are not so sure about these parts, you are referring to the coils of copper wire (indicating)?

A Yes, sir.

Q With tape wound around them?

A Yes, sir.

Q Or something like tape, wound around them?

A Yes.

Q Two of them, diametrically oppositely located?

710 A Yes, sir.

Q That is all.

A I do not know whether that engine is in use or not. I looked up my old sale bills the other night, and I know the man it was sold to.

Q You do?

A Yes, sir.

Q Who was it?

A (Producing a paper) T. M. McNear.

Q Of Elgin, Oklahoma?

A Lawton, Oklahoma.

Q Elgin?

A Lawton.

Q Lawton?

A Yes, sir. Probably, of course, there have been lots of changes, in ten years, in Oklahoma.

Mr. Williams: That is all with the witness. We are all through with Mr. Merwin.

Mr. Bulkley: Now, Mr. Milton, if you will resume.

JOHN LEWIS MILTON, resumed the stand, on behalf of the defendants, and further testified as follows:

Direct Examination Resumed by Mr. Bulkley.

Q Mr. Milton, will you go on, and tell us what was done after the completion of the drawing, the yellow drawing, Plaintiff's Exhibit 18? Do you know what one I refer to?

A Yes, I recall. I know; why, we made working drawings for patterns; then after the patterns were started, or immediately following that drawing, we proceeded to make the drawings for the machine work; and while the drawings for the patterns were being made, and the castings procured, we started on the other parts, as we would ordinarily do in a case of that kind, where we were working under speed.

Mr. Williams: Q What is that?

A I say, as we would ordinarily do in a case of that kind, when we were working for speed, expediting the work.

Mr. Bulkley: Q Well, what character of drawings did you make? How were they made, and how were they given to the workmen? In what form?

A According to my best memory, we followed our regular form.

Mr. Williams: Q What is that?

A We followed our regular routine on that, which was to make drawings on regular drawing paper, and shellac them or put a clear varnish on them, to protect them while the mechanics were handling them. And then these drawings go to the shop, and after the pieces were finished, and any changes noted on them, then we would make our tracings from those drawings.

Q Are you telling now what you would do?

A That is what we did as a regular thing; and I do not recall having changed it, for this particular development.

Q How were those drawings prepared? Were they with all of the details on one sheet, or how?

A Each part was detailed on a separate sheet.

Q And then what was finally done?

A And then, as I said, those drawings were assembled, after the corrections were made on them, and traced, on the one sheet.

Q Now, why was that plan pursued, of making separate detailed sheets?

A To expedite the production of the samples, the models.

Q Now, let me digress for a moment from this line that you have been pursuing, and ask you something here about your high tension work; and in the first place, can you
712 tell us generally what the difference is, distinctively, between a high tension magneto and a low tension magneto?

A Well, as ordinarily—

Q As you were working on them at that time?

A As ordinarily understood, a high tension or a jump spark magneto delivers electric current, at a very high voltage, sufficient to jump gaps in the spark plug—in a cylinder where there is compression, which increases the resistance very materially; whereas, with a low tension machine, it generates a current of low pressure, which is delivered to contact points in the cylinder, one of the electrodes being connected to the outside, and it is moved by a part of the engine, which separates those points,—and the arc is drawn on them.

The Court: Q Can you give about the number of volts, on a low tension, just at the spark?

A That would range anywhere from about four to eighteen volts.

The Court: And on the high tension?

A Measured somewhere between fifteen and thirty thousand.

The Court: Yes. Well, is there more current, in the low tension machine?

A Very much greater current. The current would run as high as an ampere and a half to two amperes.

The Court: And in the other?

A And in the jump spark it would run from about twenty milliamperes to as high as three hundred milliamperes; I have seen measures made; that is about a third of an ampere.

The Court: That is, about three hundred ten-thousandths?

A Three hundred thousandths.

The Court: Three hundred thousandths, of course.

A Yes.

Mr. Bulkley: Q Just give us briefly what the nature of your work was prior to 1909, in connection with the high
713 tension magneto, for the Webster Manufacturing Company.

A Just prior to Mr. Webster's and Mr. Alexander's and my departure for Europe, I remember Mr. Alexander was out here in Chicago on patent matters, and the subject was being discussed about the trip, and while he was here I got my first real good jump spark from an inductor type of magneto, and while he was making up his—weighing the subject, I told him that if he would come up and look at this thing it might help him to make his decision. That was about May or June of 1907. So that is how I fixed the date, as when we first started,—I actually had a jump spark machine in operation, and it looked very promising, although the apparatus was very, very crude. We followed that through, by slow stages, as none of us knew very much about jump spark magnetos; in fact, we did not know a great deal about any of them at that time; it was in its infancy. And on our return from Europe we proceeded with our experiments, and tests, and before we had a magneto completed, before we got one completed and distributed,—even, equipped with a distributor—

Mr. Williams: Q What was that?

A Before we even got one equipped with a distributor, we were sending out those samples, in response to Mr. Webster's messages to get the jump spark magneto on the market. I was very much opposed to that line of procedure, because I was more interested in the low tension magneto, and maintained continually that it would be the first one to give us regular business. In 1908, the summer of 1908, we had a magneto running on a Buick that belonged to Mr. Brinkley, a jump spark magneto. We had another one running on a Stoddard-Dayton, that belonged to the Webster Manufacturing Company. And in the summer or early fall of the same year I bought a Cadillac, to put that on; the engine was sent over to the Webster Manufacturing Company, in Chicago here, and I equipped it with a high tension magneto of my own make; after the work was finished, this 714 engine went back to the Cadillac plant. It was one of the first engines that the Cadillac Company had made, on their famous Model 30, which appeared in 1909; and in the early winter,—January, I think it was, of 1909, that car was sent here to Chicago by freight, and we took it out to the Webster Company, and did considerable experimenting with it, put a number of different models on it.

Mr. Williams: I do not hear you, Mr. Milton.

A We put a number of different models on it. In 1909, continually—in 1909, we submitted a number of models to the Cadillac Company, or, the Cadillac Motor Company, of Detroit. We also submitted a model to the Reo Company. These models at first went into the laboratories. The Reo Company did not manifest very much interest in it. The Cadillac did. A number of tests were made there by a man by the name of D. V. Webster, in the laboratory. Later on they got to a point where they were putting them on cars.

Q Where what?

A Putting them on their automobiles, and making road tests; and the development was coming along quite satisfactorily; and it progressed until July 14 of that year, when to my great surprise they gave us the order for their season's requirement, which was estimated at ten thousand for 1910. I say to my great surprise; I did not know that we had the order until I heard Mr. Webster say, in the presence of Mr. Leland, 'Well, how to you want these magnetos sent to you?' Mr. H. M. Leland.

Mr. Bulkley: Q Mr. Milton, whom did you have as a draftsman, assisting you, in connection with this particular line of work, high tension work?

A Why, I used a number of the draftsmen in the main drafting room, but Chiville was given to me to take my orders direct, without having to go through Mr. Smith, who was still in charge of the drafting room.

715 Q Did he work with you?

A He worked with me on—

Q Considerably, on this line?

A He worked with me almost—

Q And if so, between what periods?

A He worked with me, according to my best memory, from the fall or late summer of 1908, until August of 1909. Of course Mr. Chiville did not only do the drafting, but he did some of the machine work, some of the assembling, and made installations; as he had time to spare, he did other drafting work for me.

Q I show you a letter which is marked for identification as Exhibit 4, Defendants'. Do you remember that letter?

(Letter shown witness.)

A I remember this letter.

Q Whose initials are those at the bottom?

A Mr. T. K. Webster.

Q And you received this through the ordinary course of mail, did you?

A I did.

Mr. Bulkley: That is offered in evidence, marked for identification as Defendants' Exhibit 4,—to be marked in evidence as Defendants' Exhibit 4. I will read that, if the court please, into the record. (Reading:)

'April 16, 1909.

Union League Club, Chicago.

'Dear Milton:

Mr. Lyon'—Is that?

The Witness: Tyson.

Mr. Bulkley: (Reading:)

'Mr. Tyson telephoned that the International would send engine over to our place. I wish you would arrange to take account of stock of material on hand May 1st; also, complete list and prices of tools in your igniter department. 716 Please write me at N. Y., 88 Reade Street, how the small sized magneto comes on.'

The Witness: Yes.

Mr. Bulkley: Q 'Carries on'?

The Witness: 'Comes on.'

Mr. Bulkley: (Reading.)

'Comes on,—if you get a good spark.'

Initialed, 'T. K. W.'

Q What was referred to there as the small sized magneto, in this letter? And to what did the comment about the good spark relate?

Mr. Williams: That letter, as I understand it—I do not think the record shows—is a letter from Mr. Webster to Mr. Milton?

Mr. Bulkley: Yes, I believe so.

Mr. Williams: I object to the question, as incompetent, and calling for a conclusion, merely.

Mr. Bulkley: Q If you know, Mr. Milton,

Mr. Williams: I make the same objection.

The Court: Overruled.

Mr. Bulkley: Read the question, please.

(Pending question read.)

A Well, we had been working to reduce the size of the magneto that went on the stationary engines, and that went by a number of stages, as I recall, when we were working, making special efforts to reduce the weight.

Mr. Williams: Q What is that?

A When we were making special efforts to reduce the weight of the magneto, and we developed a still smaller one, which according to my best memory was substantially the same as afterward went into production, and as shown here in some of these exhibits, like on this demonstrating stand;

and according to my best memory, it was through his 717 anxiousness on this point that he wrote me, to find out if this small machine was going to be a success.

Q Just step here.

(Witness leaves witness stand.)

Q Is that the type of machine to which you referred (indicating Exhibit)?

A That is—

Q Plaintiff's Exhibit 47.

A Or 15.

Q Or 15. Now, during this period from when this development began, to the time that you made the suggestion to Mr. Kane, that is, in making drawings in accordance with your instructions, and along through to the completion of the work, were you out of town very much during that period, at that period?

A At that particular period, or, from a period starting in advance of that, the end of December, on 'till I went to Europe, which was in August, I spent very little time away from Chicago, and I make that statement unreservedly, because I was married in December, the previous year, and my wife was a stranger here in town, she having come from the same town I did, Louisville, Kentucky, and objected very seriously to being left here alone; and Mr. Webster had given me Mr. Chiville to help me on the high tension work, not only to expedite the matter, but to help me, to enable me, to spend more time here in Chicago; and Mr. Kane was delegated to me similarly, on low tension work.

Q Now, during this period just stated to you, from the time this development work began on this particular type of magneto, in which the magneto is mounted upon the plug, up to the conclusion of that development, to a point where it was produced as a marketable article, how much time did you devote to the high tension work, relatively speaking?

A Well, it is a bit difficult for me to say it, after the lapse of—in round figures,—ten years.

718 Q I only ask approximately. You do not need to—

A. But I know that the low tension machine was always of more interest to me, because, as I stated before, I thought that that was the machine that was going to give us our first business, and I thought I knew a great deal more about it than I did the jump spark machine.

Q Having reference, Mr. Milton, to this Exhibit 4, you told us that the small sized magneto there was one which was similar to,—Exhibits 15, or 47?

A I think those are the correct numbers.

Q Have you examined these, to see what they embody?

A The magneto structure, do you mean? The magneto proper?

Q Well, the machine, the machine itself. Have you looked at those?

A Yes, I have looked at them.

Q To see what they are. Now, what was this engine ordered for, which is referred to in this letter?

Mr. Williams: I object to that, as incompetent.

The Court: He may answer.

A As this unitary structure commenced to take form, and hold out considerable promise, I wanted to test it out, as soon as we had it convenient, and I asked Mr. Webster if he could not get for me an engine; and that letter simply shows that he had done as I had asked him to. It was a Harvester engine, a horizontal engine.

Q Now, after you had completed the work, or after the general study work, and designing, had been completed, then what next did you do after you had your various parts made, and your entire tracing completed?

A Well, there was a stage ahead of that. The detail drawings were made, and put in the shop, and the parts made, and the machine was assembled, and then it was—

Q That is, before the complete tracing?

719 A Oh, yes.

Q Embodying all the—views?

A Yes.

Q The machine was made?

A Yes; the machine was tried before the tracing was made. Then we put it on the engine, and tested it, ran it.

Q Now, point out among these various exhibits here one of those completed engines, as it was completed, before you had the tracing in its entirety made and tried out on the engine?

A Well, that is difficult to do right now, because I do not believe there are any models there that represent that machine as it was first made; there are some that would carry the idea exactly; there is the one you have your hand on (indicating), and the model, Exhibit 15, this side of it,—they carry the idea generally, almost the complete idea.

Q What were the differences, if any; could you tell, in a general way?

A Why, the difference, one difference particularly, the first one we made did not have the automatic cut-out feature on it, which these have. That was applied to the first engine of which we have photographs. It was a separate device, and later it was incorporated into this design, as is shown here. I would say that was the principal difference. Another big difference,—I will not say “big” difference,—it was an important difference,—was in the yoke; the first yoke was a forging, made up of four pieces.

Q Now, keep your voice up on this, so that we can get it.

A There was a main body, that had two pins driven into it, and riveted over. That gives three pieces. And the fourth piece was a little steel insert, and, these, we used a malleable iron casting, with the steel insert riveted into it, which brought us to two pieces. That was just another evidence of the development.

720 Q And, with those differences, it was substantially the same as—

A Substantially the same.

Q As Plaintiff's Exhibits 15, or 47?

A Substantially the same.

Q About when was it that this machine was completed, from the separate drawings which were distributed among the workmen?

A Well, I cannot say definitely, but it seems to be in my memory that it took something like two weeks to do it.

Q From and after what time?

A From and after the time we made the study drawing, as shown in this exhibit, Exhibit 18.

Q The yellow drawing.

A Yes.

Q Plaintiff's Exhibit 18?

A Yes, sir.

Q What more, if anything, did you have to do with ref-

erence to the manufacture of this new type of magneto construction, after the completion of the first specimen?

A Why, it was presented to the important prospective customers we had, the Harvester Company. And I discussed that with Mr. Webster, as the best method of doing it, and right away it was agreed that we would ask them to come over; so Mr. Cavanaugh and Mr. Maurice Kane, and Mr. Stewart, who was in charge of the patent department at that time, all came over.

Q Came over where?

A To the Webster Manufacturing Company's plant; and we took them up to the fifth floor, and ran the engine for them, with this device on it; and everybody was very much pleased; considerable enthusiasm was exhibited.

Mr. Williams: Q What is that?

A Considerable enthusiasm was exhibited, at that time.

Mr. Bulkley: Q Now, Mr. Milton, will you detail, as 721 fully as you remember it, just what you had to do with the making of the patterns, from the drawings, and to do with the foundry work, as it went through, and the machine work, as it was continued on, in connection with this first machine?

A This first machine was experimental, and to get that through the other departments, with least possible time, I found that it was always necessary to appear in person, because Mr. Webster had arranged with all of his departments to do what I wanted immediately, at the expense of the other things that were coming through; and I would talk to a man by the name of Cummings, in charge of the pattern department, and watch it through the various stages; and I discussed the design with the foundry manager.

Q Who was that?

A Mr. John Anderson. And also discussed with Munn the method of machining that. I remember particularly that when this irregularly shaped casting came out, it was a little bit of a puzzle as to just how we could machine that experimentally, and also as a regular manufacturing proposition; and I remember his showing me how he would get it to one side of the machine and how he would turn it around on the lathe, and machine the other side, and how he would hold the parallel faces in line, and how he would hold the concentric holes together, and he would measure it, over in a chuck—to get the off-

center holes, which were the ones in which the insulated electrode and the moveable electrode were put. I remember those details very distinctly. Also, it was a new problem to us; we had never made a make and break mechanism in our experiments before; that was the first one.

Q Do you remember any particular man connected with the machine work other than Munn, with whom you had to do, or dealt with, in this development?

722 A Why, on the experimental work, I discussed that with Munn. I do not recall having talked to anybody else, for the experimental end of it, that is, bringing through this first model.

Q Well, subsequently, I mean, in connection with the machine work, what did you have to do?

A You have reference to the production end, I suppose?

Q I presume so.

A The mechanics?

Q Just look at this letter, which is marked Exhibit 5, Defendants' Exhibits 5 for Identification (handing same to witness). Do you know that signature, and to whom is that addressed?

A That is Mr. T. K. Webster's signature, and is addressed to me.

Q Did you receive that letter?

A I received it.

Q Do you remember having received it?

A I do.

Q And, generally, of its contents?

A Yes, sir.

Q About when was that? About May, of 1909?

A The date is quite in accordance with my memory of its coming directly after the Harvester matter.

Mr. Bulkley: We offer it in evidence, as Defendants' Exhibit 5, formerly identified as Exhibit 5.

The Court: Admitted.

Mr. Bulkley: (Reading): "Hotel Seville, New York.

"Dear John:

Had a very interesting interview with Mr. Hill, of 723 'Fairbanks.' Also interviewed the President. Mr.

Wells, Mr. Hubbard, and two of their foreign representatives. If the attachment of the No. magneto proves out all right on Field-B, then will put it on all their engines.

They will have Bates & Edmonds send one of their engines to put the spring type on. The other style,—although the fly wheel was so hard to start—”

The Witness: “Back of the fly wheel”

Mr. Bulkley: Oh, yes. (Reading):

“The other style, back of fly wheel, was so hard to start, that they have not been selling any. We must follow up both of them as soon as possible.

Yours truly,

T. K. WEBSTER,
May, 1909”

Mr. Bulkley: Q Now, here is another letter, which was marked for identification as Defendants’ Exhibit 6 (handing same to witness). Do you remember that letter, and whose signature it is, and when you got it, and how you got it?

A I remember the letter; I remember the contents of it. I initialed this myself at that time.

Q By whom was it written, and to whom was it sent?

A It was written by me to Mr. T. K. Webster, at New York City. The stenographer was Miss Laura Kitchell.

Mr. Bulkley: Offered in evidence, as Defendants’ Exhibit 6. (Reading): The lettering appears at the head, “J. L. M./L. K.”

“May 21, 1909.

“Mr. T. K. Webster,
New York City.

Dear Mr. Webster:

724 We are today in receipt of a letter from Bates & Edmonds Motor Company, advising us that Fairbanks & Company had asked them to send us an engine for attaching our oscillating type of magneto. We are writing them to send it at once, as we can give it immediate attention.

“I am writing you today to urge your getting the Fairbanks Co. to take the 150 magnetos that we have made especially for their small vertical engine, for the reason that as soon as they see this oscillating type of megneto, they will not consider this old type, whereas now they very probably would, especially if we quote them a low price. I would recommend going as low as \$5 or \$6. This would enable them to use the battery for starting, and then switch over to the magneto. You probably know that this magneto has proven thoroughly satisfactory to them, with the single exception of the starting. It is as permanent and durable as a

magneto can be made, with the present knowledge of it, so it will not be offering them an inferior article.

Soliciting your careful consideration of the above, I am,
Yours very truly,

J. L. M."

Q What type of magneto was it referred to in this letter, as the batch of 150 magnetos?

A It was the one that was built back of the fly-wheel, known as our Type C, or Type C-1, and shown in our catalogue at that time.

Q I ask you to look at another letter, Mr. Milton, purporting to be dated the fifth of October, 1909. (Handing same to witness) Who wrote that letter, and to whom was it written and mailed?

725 A This was May 10, 1909.

Q Who wrote that letter? Did you?

A I wrote the letter.

Q And to whom?

A To Mr. T. K. Webster, New York City, care Webster Manufacturing Company.

Q And when?

A May 10, 1909.

Mr. Bulkley: Offered in evidence; it was marked for identification as Defendants' Exhibit 14; offered in evidence as Defendants' Exhibit 14. The lettering at the head, "J. L. M." a

(Reading):

"J. L. M.

5/10/1909

Mr. T. K. Webster,

President, Webster Manufacturing Company,
New York City.

"Dear Mr. Webster:

I have your two letters of the 8th, and in reply thereto desire to state that we have ordered dies for the smaller type of low tension magneto, which is to be used on the Harvester work. Just prior to taking our inventory we had to concentrate our attention on getting the equipment ready for Mr. Chiville. The inventory was a serious interruption. And since then we have been very busy attending to the Harvester Company's demands. They have gotten intensely impatient, telephoning several times a day, as well as telegraphing us from Milwaukee. This has all been supplemented by many letters; so you can readily see why we have

concentrated our attention to this live business. We expect to make shipment today that will satisfy their immediate demands, which will allow us to go back to the high tension magneto tomorrow, I have done nothing further on the completion of the small high tension coil. I am pleased to note from your various communications that the magneto is working satisfactorily.

Yours very truly,

JNO. L. MILTON."

726 Q Now, what was referred to in this letter as the smaller type magneto, for jump spark work?

A That is substantially the same magneto as shown in Complainant's Exhibit No. 15.

Mr. Williams: Q What was that?

A I think—

Q As shown what?

A Complainant's Exhibit No. 15.

Mr. Bulkley: Just look at this letter, and see what that refers to, if you please.

A It says very definitely here the low—the small type of low tension magneto which is to be used on the Harvester work.

Q Then you were mistaken, were you, when you referred to the Exhibit 15 as the—

A No.

Q Is that a jump spark type?

A Harvester work. It is low tension work.

Q Yes, but it is not a jump spark, is it?

A Not a jump spark.

Q This 15 is not a jump spark?

A No, it is not a jump spark.

Q Yes.

A Low tension.

Mr. Bulkley: I think I brought about the confusion myself. Now, to make it perfectly clear,— I think that your confusion was the result of my confusion. The ordering of dies was for the low tension magneto, as the letter says, and what type of magneto was that? That was Exhibit 15; like Exhibit 15?

The Witness: Like Exhibit 15. 15 may have been made from those same dies.

Q Now, then, let me ask you what the smaller type mag-

neto for jump spark work referred to; what type of magneto was that?

727 A Down below here?

Q Yes. Just the same sentence.

A That is the jump spark magneto that Mr. Webster was working with down at New York; he had, as I recall it, the Maxwell-Briscoe people interested in that.

Mr. Williams: What was that, Mr. Milton?

The Witness: As I remember, he had the Maxwell-Briscoe Co. interested in that magneto, and he was working down there at New York, which accounts for his presence at New York, my having addressed him there; he had Mr. Chiville with him. They were testing it out on an automobile. I say here: "We expect to make shipment to-day"—No, that is wrong. "We expect to"—No.

Mr. Bulkley: Q Perhaps I can call your attention to it without making further mistakes. You mentioned here the fact that the Harvester Company was intensely impatient and telephoning several times a day from Milwaukee; what were they telephoning to you impatiently about?

A For deliveries of the low tension magneto.

Q Of what type?

A A low tension type.

Q Well, what particular kind of magneto?

A Oscillator. Oscillator type.

Q Which of the many kinds that you had produced were they impatient to get?

A Substantially the same as shown here in this Exhibit 15 of the Defendants.

Mr. Williams: Shown in Exhibit 15 of what?

The Witness: Of the Defendants.

Mr. Peaks: Of the Plaintiff.

The Witness: Plaintiff's. I beg pardon.

Mr. Bulkley: Q What did you refer to in this letter as "live business"?

728 The Witness: I had in mind the business that would be worth while and actually develop into something, something tangible.

Mr. Williams: What is the last, Mr. Milton?

The Witness: Something tangible.

Q Had you ever sold any high tension magnetos while you were with the Webster Company?

A Not up to this time.

Q And you had sold low tension magnetos, had you not?

A We had.

Q What was this small high tension coil to which you refer in this letter, and in connection with which you say you had done nothing further on it for some time?

A We were experimenting with a regular jump spark on a Rumkorff type of transformer coil which was used in connection with the jump spark magneto, and we had made different sizes of that and this was a smaller type.

Q Just look at this letter also, Mr. Milton, and state whether you ever received it and from whom, the initials here at the bottom of it, when it was you received it and how you received it.

A I received this letter in due course of time, shortly after the date that was given here, May 22, 1909, and from Mr. Webster while he was in New York.

Mr. Bulkley: This letter heretofore marked as Defendant's Exhibit for Identification 7 is offered as Defendant's Exhibit 7. (Reading.)

(Said document, so offered and received in evidence, was marked Defendant's Exhibit 7, and the same is in the words and figures following to wit:)

729

(DEFENDANT'S EXHIBIT 7.)

"Webster Manufacturing Company

"New York, U. S. A. May 22, 1909.

"Dictated by TKW W

"Mr. John Milton,

"Webster Manufacturing Company,

"Chicago, Ill.

"Dear Milton:

"Chiville arrived on time and I find that what happened was where he attached the rods of the magneto. This connection gave way and when they put it on again attached it to the wrong place to attach it and they could not get sufficient swing to start it from the seat. This we are remedying to-day.

"I also received the foreign patents in the hands of Chiville. I am glad to know that the Harvester magneto has been expressed.

"I have just seen Mr. Knight and he tells me that they are intending to put the magneto on a 45 H. P. car. Chiville has expressed himself as being afraid that our magneto will not

serve a 45 H. P. car. I had always supposed that our magneto was plenty big enough for any car. Do you think Chicago is right. Answer me by Twentieth Century.

“T K W,
“President.”

Q What type or kind of a magneto was referred to by the words “Harvester Magneto which has been expressed”?

A That was calling for one of the same type as Plaintiff’s Exhibit 15; as I remember, it carried the bracket with it, as he wanted to show it to some people there at New York.

Mr. Williams: What was that, Mr. Milton?

The Witness: As I remember it, it carried a bracket 730 with it, as he wanted to show it to some people there at New York.

Mr. Bulkley: Q Look at this letter, Mr. Milton. These are copies. Where did you get that letter, how did you get it, and from whom did you get it?

The Witness: This is a letter addressed to me, or sent to me by Mr. T. K. Webster, and I received it in London, England, at 22 Torrington Square. The letter is dated October 25, 1909. I received it, as I remember, when I got back from the conference; it was there waiting for me.

Mr. Bulkley: The letter referred to is offered, marked Defendant’s Exhibit 22. I will read it. “Webster Manufacturing Company, Dictated by T. K. W.—L. K. Chicago, October 25—

Mr. Williams: Let me object to that letter first, the form of it for want of sufficient identification. That has not been—That is a new one that has not been submitted to any one else, is it not?

Mr. Bulkley: I do not know whether it has been submitted to you or not. I do not think this one has. No. The witness says that it was received by him in due course of mail delivery.

Q You identify this as the signature of Mr. Webster, do you?

A I remember it very distinctly.

Q You identify this signature as that of Mr. Webster?

A I do.

(The said document, so offered and received in evidence, was marked Defendant’s Exhibit 22, and was read as follows, to wit:)

"Chicago, October 25, 1909.

"Mr. John L. Milton,
"American Express Co.,
" #6 Haymarket
"London, W. C.

"Dear Sir:

"I went out to the Harvester Co. to-day and find that 731 they have been having very poor success indeed in the foreign trade with the Milton magneto of the square type attached by the boss to the engine.

"We received a short time ago a letter containing twelve counts against this machine. They are greatly discouraged about it. In fact, they were ready to abandon it, had not Mr. Cavanagh sent them a cable last week, advising them that the new machine had overcome all the objections they spoke about in the old one. I think if you wish to retain the foreign trade for the Milton magneto it would be well for you to go over to Hamburg and see Mr. H. V. Couchman.

"We are sending him by express today a model of the low tension machine as it is now adopted by the Harvester Co. They have been delayed in making shipments of engines with the magnetos, though I believe they now have two or three on the ocean and more are going through. The delay has not been our fault but the fault of the factory at Milwaukee in not getting out the attachments promptly.

"Yours very truly,

" T. K. WEBSTER

Q What is that, some initials, below the name of T. K. Webster?

A Abbreviation for "President."

Mr. Williams: What was that?

The Witness: Abbreviation for "President."

Mr. Bulkley: Q When did you go to Europe during 1909?

The Witness: In August, about the third week.

Q How did you happen to go to Europe? For what purpose primarily?

A There were a number of purposes.

Q State very briefly.

A I had been working very hard on these different developments of the low tension magneto and high tension magneto and shortly after the Cadillac gave us that order of July

14—

732 Mr. Williams: What is that, Mr. Milton?

The Witness: Shortly after the Cadillac gave us an order on July 14, 1909, of magnetos for the next year's re-

quirements. Mr. Webster called a meeting here in Chicago, of Mr. Bert Stephens, his son T. K. Webster, Jr., Mr. A. P. Perkins, Vice-President of the company, and Mr. Henry Epley who was Superintendent of the Malleable Iron, a subsidiary of the Webster Manufacturing Company located at Tiffin, Ohio. And Mr. T. K. Webster, Jr., was also an officer of this company.

This meeting was held at the Union League Club, and for the purpose of discussing how this business of the Cadillac was to be handled. There was considerable difference of opinion; I was in favor of holding it here in Chicago where we had a good labor market, excellent material market, and the nucleus of a factory already in operation, together with other departments which could give valuable assistance.

I neglected to state that Mr. H. Waterbury, who was president of the Tiffin Malleable Iron, was also present at this meeting. Mr. Waterbury was anxious to get the business in Tiffin where his company was located; Mr. Webster wanted it there, and Mr. Perkins and Mr. Stevens, who was a stockholder in the Webster Company, was opposed to it; and I remember Mr. Stevens offering to bet Mr. Webster a suit of clothes that he would not make the deliveries in the specified time if it went to the Tiffin factory.

At this meeting Mr. Webster told me that I had done some good work, that he knew I was tired and worn out, and to take a rest, and he was going to put a couple of fresh horses in my place; I rememebr that phrase distinctly. The "fresh horses" were his son and Mr. Epley.

So I planned to take this rest in Europe, and also to look after my foreign patents which had been very seriously
733 neglected and on which I could get no agreement from Mr. Webster. We had talked it over a great many times,—that is, Mr. Webster, Mr. Walter E. Teagle and Mr. Alexander and myself, all of us having been previously interested in the foreign development of the—When the other trip to Europe was made.

Mr. Bulkley: Q How long were you away in Europe?

A From about the third week in August until Christmas time. I was back in this country for Christmas, and I was in Tiffin, Ohio, on Christmas Eve.

Q Did you become associated again with Mr. T. K. Webster upon your return?

A The next winter, or, rather, the same winter, over in January or February of the next year, Mr. Webster's sales

manager, a man by the name of Major B. Hawkshurst, was very keenly interested in some development work that I had been doing on another form of ignition apparatus which was known as the flaming arc system. He came down to Louisville where I was doing my work, to observe the results, and he reported very favorably to Mr. Webster and urged that Mr. Webster avail himself of the opportunity to get this device and put it on the market. It resulted in my going to Tiffin and spending a number of months working with the Webster Company, at my own expense,—that is, as far as my personal expenses went, the Webster Company simply—the Webster Electric Company simply furnishing material and some labor, and the space in which to develop this device.

Q Before you left for Europe did Mr. Webster know that you were going to Europe?

A Mr. Webster knew it.

Q Did he make any objection to your going to Europe?

A He did not, that I can recall.

Q Did he say anything to you about leaving them in the lurch at a critical time?

A No he rather—My impression is that he was very
734 glad to get away so that the "fresh horses" could carry it on.

Q Incidentally I want to call your attention to the instance when Mr. Webster says he got his first jolt in connection with the test of the Cadillac car with the high tension magneto on it, when he said that it was all prepared for the engineers to take a run across Michigan and test that magneto, and he was surprised to find that you would not go with him; do you remember anything about that?

A I do.

Q Why didn't you go? Why couldn't you go at that time?

A Well, the representation that that was prepared for the engineer to make a test was hardly an actual one. The engineer had been working on the car for at least two months,—the real engineers of the company; Mr. Fred Hawse, Mr. Johnson and Mr. E. E. Sweet; and they knew what the car was doing and what the magneto was doing. And this Mr. McKechney that Mr. Webster wanted to take over to the summer place, Holland, Michigan, was rated as an electrician, he was not rated as an engineer, he had the department that made the installation of the equipment on the cars. And I was not feeling equal to that trip and I did not wish to go for that reason. I do remember of going with Mr. Webster to

the Cadillac plant, because, as I understood it, Mr. H. M. Leland would not allow the car to go out unless I was present, thinking—That they had a very strict ruling, I forget what they called it at that time, against “joy rides.” He wanted some results to be gotten from the use of the car.

Q Mr. Milton, Mr. Kane has testified as to having shown you this drawing Exhibit 18—Plaintiff’s Exhibit 17, I should say, the one on tracing paper, and he has testified to some remarks which he said you made when shown that drawing.

(Interruption.)

The Court: I understood you went to Europe in August, 1909, and returned in December, 1909.

The Witness: Exactly; before Christmas.

Mr. Bulkley: Q Well, let me pass that until we can get a copy of the testimony. Oh, let me ask you this while we have that for a moment. When you went to Europe, what did you do before leaving this country in connection with the plan which you had in view in Europe to develop the sale of your magneto? What preparation did you make, what did you do? Have any dies made?

The Witness: Well, that was another phase of it. The manufacture of this magneto in Europe was proposed and agreed to by Mr. Walter C. Teagle and he had me to order punches, dies and necessary machinery.

Mr. Williams: I object to that, as to what Teagle may have agreed. I do not see that this witness—

Mr. Bulkley: Q Don’t state anything about that. Tell me what you did do before you went away, in connection with the matter in hand.

The Witness: Prepared to manufacture the magneto in Europe.

Q What did you do in this country?

A Had tools made.

Q And took those to Europe. What magneto was that?

A It was what was known in the trade as the Milton magneto.

Q Which one of the many magnetos we have had—

A Our Exhibit 15.

Q The improved, the last you mean?

A Yes.

Q Then what did you do after you got abroad in connection with that?

A I made arrangements for the manufacture of the magneto with Elliott Brothers, at their Century Works.

736 Q What were they?

A. They were instrument builders of—there in London.

Q What did they do?

A Started to manufacture.

Q Did they manufacture any considerable number of them?

A I simply do not know how many; I do not remember of ever having seen a report of that. Mr. Teagle looked after them.

Q Mr. Milton, what did you do about patents over there?

A Started at once to have a patent prepared, by Marks & Clerk.

Q On what?

A On this particular device, the Milton magneto with the attachment, and also had other patent—matters pertaining to patents, which needed my attention.

Q Why didn't you take out—Did you file any application in the United States before in Europe?

A I had not at that time.

Q Why not?

A Because Mr. Webster and I had not agreed on the patent policy, and we simply could never come to conclusions when those questions came up, and I knew that it was my plan to file the thing,—to file the application as soon as I got to Europe and that my rights would be preserved under the rulings of the Convention, so that I could apply for it at any time within a year after that.

The Court: What was the date of your English application?

The Witness: October 1909; I think it was the 29th of the month.

Mr. Bulkley: I offer in evidence in this case a copy of the Milton English Patent, 24848 A. D. 1909, to be marked Defendant's Exhibit 23;

Mr. Bulkley: Q When you got back what did you do about the patents in the United States on this unitary bracket arrangement.

The Witness: I watched the time and took it up with Mr. Webster, and also with—

737 Q When you took it up with Mr. Webster what did you say to him and what did he say to you about it?

A I told him I thought that a patent protection ought to be procured in this country.

Q On what? What did you tell him? Tell all you said about it.

A "Is this particular device the same thing?"

Q What particular device?

A The Milton magneto and the unitary bracket and spark plug; the one subject which you are discussing.

Q What did he say?

A I don't remember of his ever agreeing to take it out, simply to start the work on it; he would simply delay the matter from time to time and think it over, and then I remember of writing to Mr. Williams to—on the subject. I also wrote to Mr. Webster on the subject.

Q What Mr. Williams was that? What Mr. Williams was that that you refer to?

A Mr. Lynn A. Williams.

Q Attorney for the Webster Company?

A Attorney for the Webster Electric Company at that time.

Mr. Buckley: I wonder if we couldn't at recess arrange to put all this bundle in without going all over it?

The Court: Are you ready now to do that?

Mr. Bulkley: Yes. With this witness? Wes.

Q Are you familiar with Mr. Lynn A. Williams' signature? Do you know it when you see it?

A Yes.

Q I will call you attention to that letter; when did you receive that? Do you know the signature to that letter?

A It is dated October 13, 1910, and I don't remember its having come through anything irregularly. And this is Mr. Lynn A. Williams' signature, as I have seen it many times.

Mr. Bulkley: I offer it in evidence as Defendant's Exhibit 24. (Reading.)

738 (Said document, so offered and received in evidence, was marked Defendant's Exhibit 24, and is in the words and figures following, to wit:)

"Brown & Williams

"October 13, 1910.

"Mr. John L. Milton,
c/o Webster Electric Co.,
Tiffin, Ohio.

Dear Sir:

"You will appreciate that I must be a little careful about taking up application work for you. I have, therefore, shown

your letter to Mr. Linthieum. He says that there can be no objection to my taking up the work for you if the Webster Company is not interested. I have talked also with Mr. Webster over the telephone and have told him that I should like to file the application for you if he does not wish to do anything with it. He promised to come in today and to come to a final decision one way or the other. If the Webster Company does not care to do anything with the matter, I shall be glad to take it up for you and will proceed with the preparation of the papers at once. We can have them ready in the course of four or five days and that will give us time to make any corrections or revisions that may be required before they are executed and filed.

"I will write you to-night telling you whether or not Mr. Webster has been here and, if he comes, the result of our interview.

"Yours very truly,

"LYNN A. WILLIAMS."

Q To what application work did this letter refer?

A That was my own serial number, "Case #10," which is the tenth of the series.

739 Q I don't believe that number appears in this letter; I may be mistaken, but I don't think it is in that one.

A I have it written there. (Indicating.)

Q Oh, I beg your pardon.

A And it was on that apparatus that we were selling to the Harvester Company, known as the Milton magneto, the unitary plug and bracket structure.

Q Look at this letter that was marked; when did you get that letter? How did you get it and from whom?

A Shortly after its date. It was from Mr. Lynn A. Williams, addressed to me care of Webster Electric Company, Tiffin, Ohio. I received it.

Q It is marked in pencil in that mark, Mr. Milton?

A Yes.

Q It has the pencil mark, "Case #10." (Reading letter:)

(Said document, so offered and received in evidence, was marked Defendant's Exhibit 25, and is in the words and figures following, to wit:)

“Offices of Brown & Williams

“Chicago, October 13, 1910.

“Mr. John L. Milton,

“c/o Webster Electric Co.,

“Tiffin, Ohio.

“Dear Sir:

“Mr. T. K. Webster has been in talking with me about the United States application covering the subject-matter of your British application number 24838/’09. He will not be able to come to a definite conclusion until to-morrow when he wishes me to look over one of the low tension machines which the company is now making.

“I told him that you appreciated the importance of having the United States application filed at once and that you were therefore insistent that a decision should be reached. I told him that you were right in appreciating the importance of prompt action. The result of our conference was that we shall proceed at once with the preparation of the application papers and before they are finished Mr. Webster will have come to a decision. If he does not wish to file the application, it will be available to you for that purpose and can be filed easily within the time limit.

“Yours very truly,

“LYNN A. WILLIAMS.”

The Court: What is the date of it?

Mr. Bulkley: October 13, 1910.

I offer in evidence a copy of the Milton domestic patent, United States patent, which was filed on October 28, 1910, and the number of which is 1,096,048.

Q You are the “John L. Milton” referred to in that patent?

The Witness: I am.

Mr. Bulkley: (Indicating) That is offered in evidence as Defendant’s Exhibit 25.

Mr. Williams: Are you offering that letter of October 13 the second one?

Mr. Bulkley: Yes. Better put that in first, if you please; letter of Williams to Milton of October 13, 1910, offered as Defendant’s Exhibit 25, and the patent as Defendant’s Exhibit 26.

And I also offer in evidence two other patents of Milton, respectively numbers 1,053,107 and 1,051,373, issued on Jan-

uary 21, 1913, and February 11, 1913, to be marked Defendant's Exhibits 27 and 28.

Mr. Bulkley: Q. Who paid the filing fees on this application on the unitary structure type of magneto which was filed in October of 1910?

The Witness: I bought a Post Office Money Order in Tiffin, Ohio, and sent it on myself with the application.

Q Did you receive a bill from Mr. Williams for his services in connection with the preparation of this application?

A I did.

Q Did you pay that bill?

A I did not.

741 Q Who paid the final Government fee on this application, do you know, Mr. Milton, when the patent issued?

A I do not know. I fancy it was the Webster Electric Co.

Q Look at this letter; from whom did you receive it, and when and how?

A It is another letter from Mr. Lynn A. Williams, addressed to me at Tiffin, Ohio, under date of October 1, 1910. According to my remembrance, I received it about that time.

Mr. Bulkley: It has the pencil marks, "Case #10" at the head of it. (Reading:)

"Offices of Brown & Williams

"October 1, 1910.

"Mr. John L. Milton,

"C/o Webster Electric Co.,

"Tiffin, Ohio.

"Dear Sir:

"Replying to your letter of September 29th, I have to say that we called the matter of the application covering the subject matter of the British Patent No. 24838/'09 to Mr. Webster and the Webster Electric Co. but have had no reply.

"I do not believe they would wish me to decide the matter on my own initiative.

"I have, therefore, written them again, enclosing a copy of this letter.

"Yours very truly,

"LYNN A. WILLIAMS."

Mr. Bulkley: I offer in evidence Defendant's Exhibit 29.

Q Look at this letter and state from whom you got it and when and how?

742 A Letter from the firm of Brown & Williams, dated September 10, 1910, to me at the Webster Electric Company, Tiffin, Ohio. I received it shortly after that.

Mr. Bulkley: I offer it in evidence, marked as defendant's Exhibit 30.

(Said letter was then received in evidence, marked defendant's Exhibit 30, and was read as follows:)

Pencil note: "Case No. 10.

September 10, 1910.

Mr. John L. Milton,
Care of Webster Electric Co.,
Tiffin, Ohio.

Dear Sir:—

We beg to acknowledge receipt of your favor of September 8th, enclosing papers in the matter of British application 24838 of 1909. We are waiting to ascertain whether or not the corresponding U. S. application is to be filed. We shall let you know promptly of the decision in this matter.

Yours very truly,

BROWN & WILLIAMS."

And in pend there is this appended:

"Tiffin, September 29, 1910.

Mr. Lynn A. Williams,
Monadnock Block,
Chicago, Ill.

My dear Mr. Williams:

I have not received further reply to your letter of the 10th inst. The time in which to get this application of British No. 24838 of '09 has almost expired. I am obliged to request you to advise me by return mail your decision, as well
743 as that of the Webster Manufacturing Company on this matter.

Please let me have the confirmation as above."

(Initialed) Jxo. L. M.

Q Here is a letter under date of January 5, 1911. How did you get that, from whom and when?

A From Brown & Williams, addressed to me at Tiffin, Ohio, care of Webster Electric Company and bears date of January 5, 1911. I received that letter shortly thereafter.

Q And this other letter which I show you?

A That is another letter from Brown & Williams dated February 7, 1911, addressed to me care of the Webster Electric Company, Tiffin, Ohio. I received it.

Mr. Bulkley: The letter of January 5th, 1911, is offered

in evidence as defendant's Exhibit 31, and the letter of February 7, 1911, is offered in evidence as defendant's Exhibit 32.

* * * * *

Q Have you in your possession any letter written by you to Mr. Webster personally asking him whether he had decided to take up this American application or not, the filing of the United States application on this British patent?

A I don't have it here, but I think I can locate it.

Q Will you try to do that? That will close the presentation of this correspondence. Perhaps I better postpone that and go on with something else.

You testified in an interference case at one time in connection with this same matter.

A I did.

Q Do you remember about when that was?

A I believe it was in January of 1917.

Q Now, tell us under what circumstances you came to 744 testify in that case.

A Previous to my giving the actual testimony Mr. Williams had written me—Mr. Lynn A. Williams had written me about doing this. I was very, very busy at the time and simply could not spare the time to get up any information on it or give the time to the taking of the testimony. Time drifted along until one day I was in his office on some other business and he asked me if I could not—when I could do it.

Q When you could do what?

A When I could give my time for taking of this testimony. I told him I simply could not see my way clear to giving any time in the immediate future, because we were just in the midst of moving our plant—having moved our plant from Detroit to Cleveland and getting established, and my time was needed in my regular work to the exclusion of everything else. He asked me if he could not take it that day. I had an engagement at 6 o'clock, leaving town that night, and he asked me if he could not take it right then, that it would not take very long, and I agreed to give it to him. I happened to be in his office. I hadn't any record and none of my letters.

Q Had you at any time previous to that, within a recent period, examined any documents or letters or anything to refresh your recollection as to the circumstances connected with this matter?

A The interference was declared about the last of August

or the first of September, and when I got my notice from the patent office—

Q What year?

A 1906.

The Court: 1916?

The Witness: 1916, I beg your pardon. And about the first of October Mr. Lynn Williams came to Detroit to
745 see me. He wrote me a note and said he was in town and asked me to call him up at the Hotel Statler, I think it was, which I did. If I remember correctly, that same evening we had dinner together at my residence and we started to look over these records.

Q What records?

A Over the records of this interference, and we went to the basement—

Q What did Mr. Williams tell you he wanted to do?

A To hunt up any supporting data that I would have on this, as to when I conceived this invention, and whom I talked to, and anything else that would help to substantiate the fact that I was the inventor of it. The thing was very old at that time; the patents were issued and the manufacturing proceeding. I had dismissed the thing as a closed issue. However, I told him that I had some of my files and I could in a short time put my hand on files that should carry the information pertaining to this particular case, which was case No. 10. We went down in the basement and opened a trunk and fished out the file of Case No. 10 and he inspected it. We went through another file of miscellaneous drawings, as I recall it, and it is my remembrance that I gave him a blue print at that time.

Q Do you know what this blue print was about?

A On this unitary structure of the magneto. I do not recall whether it was detail or assembly. I told him at the time that I had some other blue prints and data at Louisville, Kentucky and I would send for them, which I did, and they came through in due course and in looking through them I was not impressed that there was anything there that would set the date of this particular development, although I found the facts as they developed showed that there was—

Q Never mind what was shown. Just state the facts.

A The thing went along until, as I recall it, some months after that, when Mr. See came over—that might be in
746 January, I don't know, but it was quite some months

afterwards. I have the accurate record on that if you wish it.

Q State it generally.

A Mr. See went through my files and took a number of exhibits, photographs, and pamphlets, and I don't recall whether there were any drawings went with it or not, but he sent me a list of them the next day, and I have his receipt.

Mr. Williams: You have what?

A I have his receipt, a letter in which he states what he had taken, and from that time until the time I gave the testimony there was nothing done that I can recall.

Q How long a time were you occupied in giving your testimony in that case?

A According to my memory it was about an hour or an hour and a quarter.

Q Did you subsequently find any other papers, or make any other investigation or search for papers?

A The matter dropped entirely from my mind at that time—

Q That is, of giving your testimony?

A Of giving my testimony. They sent me a copy to sign, which I signed and forwarded, and until I got a letter from—No, I don't remember of anything occurring after that until in the testimony of this last year, last November or the first of December, this last year, I first learned that the interference had been decided in favor of Kane.

Q What did you do then? How did you learn that?

A I was at Racine, Wisconsin on some other work, and met you, Mr. C. C. Bulkley, and was introduced to you by Mr. Emil Podlesak, and we had dinner together and you informed me of the proceeding, and asked me what I knew about them, and I was very much interested to know the way the thing had developed.

Q Did you subsequently make an effort to find any other or further papers in connection with this matter?

747 A I agreed—I promised you that I would look through my drawings again and you—

Mr. Williams: That you would do what?

A Look through my drawings again, which I did, and I was not impressed that I had anything of any information—that would contribute any definite information on the subject until—well, the matter was dropped then for the time being and along in December, later, Mr. Bulkley came to Cleveland

on an appointment which was arranged by Mr. A. H. Bates of Cleveland, and met him in the evening, and spent a couple of hours with him—which I did. At that time we made a review of the case in the presence of Mr. Bates, and during this review he read the testimony as it was given from the records.

Q Whose testimony do you remember was read?

A The testimony of Mr.— It wasn't the complete testimony; just extracts from Mr. T. K. Webster's, Mr. E. J. Kane's, Mr. Chiville and Mr. Abbott Munn.

Q Had you read or heard read that testimony before?

A Never heard of it before.

Q Proceed.

Mr Williams: What was that last?

The Witness: I never heard of it before.

Mr Bulkley: Q What did you do after that interview with me and Mr. Bates?

A I did quite a little bit of thinking. I felt that a great injustice had been done me. I felt that my record in the patent office had been besmirched and proceeded to hunt up my correspondence.

Mr Williams: What was the last?

Mr Bulkley: Q What did you do after that interview with me and Mr. Bates?

Mr Williams: I object to that last answer as to his inner feelings.

748 The Court: He said he did a lot of thinking, that is all right.

Mr Williams: I don't know how it is competent as evidence.

The Court: He is pointing out what he did and why he did it.

The Witness: I thought that I might be able to set right what appeared to be wrong to me in that testimony.

The Court: In your own testimony?

A In that testimony as it was read to me by Mr. Bulkley.

The Court: The testimony of the others.

A Yes, I remember that I had written—that I had a considerable lot of correspondence with Mr. Teagle, and Mr. Alexander. Mr. Alexander was the former patent attorney for the Webster Manufacturing Company. I looked up my files on that and I came across some other files and I thought they might have something in them. And the more I went

through the files the more records I found that would refresh my memory and also what I thought would tend to right some of these statements that I thought were wrong, in the other letters that have been offered here today, so I told Mr. Bates what I had found. At that time I didn't want to come to the case here and be a witness. I wanted to give my testimony in Cleveland.

Mr Williams: I object to what he wanted to do. If he will confine himself to facts.

The Court: Yes.

Mr Williams: If he will tell all that he said and did, that will be better.

The Witness: This is an unusual proceeding for me and I don't know what the limits are. If I overstep them I hope to be corrected.

The Court: I will correct you, if necessary.

Mr Bulkley: Q Then what did you do?

A In what respect?

Q After you had discovered this evidence, this correspondence.

749 A I brought them here to Chicago and exhibited them in Mr. Lynn Williams' office to you and Mr. Williams and some other attorneys jointly. That was the end of the case, which was January 13, 1919.

Q Now, will you tell us under what circumstances Joe Kane came into the employ of the Webster Manufacturing Company? What did you have to do with that, if anything?

A In 1908, September, at the Springfield Fair—the Illinois State Fair held at Springfield, Illinois, I attended the exhibit of the International Harvester Company which I mentioned previously, and during the time I was there Mr. Maurice Kane told me that he would like for his son to get some ignition experience and wanted to know if we could give him a position there at the plant. I was very glad to have him present that subject to me in that way, for that—

Mr Williams: What is that?

The Witness: I was very glad to have him present the subject to me for a number of reasons. I told him to send his son out and he came out and he started to work shortly after that. That was September—I think it was the next month—I had met him before when he came out to get a magneto, which he put on his boat. We gave him a magneto.

Q Did Mr. Webster make any complaint to you about the

slow way you were getting out this new low tension magneto of the unitary bracket type?

A He always manifested considerable impatience on this experimental work.

Q I mean this particular work.

A At this particular talk I was additionally impressed with it, because it was the first time— The only talk that I can remember where he offered to subordinate the jump spark or automobile ignition for the low tension or stationary engine ignition, and his proposition was to take Mr. Chiville off the jump spark work and put him on this low tension work.

750 Q Did you do that?

A I did.

Q What did Mr. Chiville do about it?

A Mr. Chiville was working, doing his drafting in the main drafting room on the third floor of the old building of the Webster Manufacturing Company, and he took the ideas that I gave him of consolidating the double link motion machine with the bracket supporting magneto, with the spark electrodes in the casting that it was formed in—

Q Do you mean the spark plug?

A The spark plug carrying the whole thing on the two bolts.

Q What two bolts?

A The only two bolts that are available at that time for that; the bolts that formerly held—

Q The cylinder bolts; the engine bolts?

A They are both on the side of the cylinder wall. Mr. Chiville carried out the instructions very faithfully, as I recall it. He took that identical apparatus, consolidated it with the plug, and turned it in a vertical position, and it gave me substantially what we would have if we took the double link motion and put it on the plug. He worked it with the bell crank lever, which was the first connection with the push rod. That formed one of the links. This was a very unsightly affair and it was not possible to use it because it would interfere or strike the hopper on the hopper cooling type of the International Harvester engine. While he was doing that Mr. Kane was working on the other type, which I finally used.

Q The double link type?

A No, we gradually eliminated the parts—

Q Did he start with the double link type?

A We started with the double link type, with that general arrangement, and as we worked on the thing and got it developed in the process of development we dropped one 751 part and then another as we simplified it, which is the ordinary process of these experimental developments.

Q Then what did you finally reach? What type of adaptation of the magneto did you reach?

A We finally reached the unitary plug with magneto supporting bracket as an integral unit.

Q Single or double link?

A We finally eliminated the links, and had the push come over the roller direct, instead of being moved by the link. The roller did the guiding.

Q Now will ask you what I started to ask you before, with reference to this Exhibit 18, in connection with what Mr. Kane said you said when he came and showed you this drawing, Exhibit 18. Wait just a moment.

Mr. Williams: We object to this question as the witness testified that he did not recall that Kane ever showed him that drawing.

The Court: I think he did.

Mr. Williams: He said he saw it on white paper.

The Witness: I certainly stated that this drawing here Mr. Kane and I worked over together.

The Court: I think he did. You may answer.

Mr. Bulkley: I haven't quite completed it.

Q Mr. Kane says that he showed you that drawing and talked with you about it; that he showed it to you right after he showed it to Mr. Webster; that you looked it over and said: "I don't think that is going to work; you have got the igniter finger pointing upward, with the direct push of the magneto; and that is going to place it out of time, so that it won't trip at the right time. Did you ever say that to him or that in substance?

A I don't recall ever having said that in substance, in the first place, and in the second place, if I had said it, it 752 would have been very illogical.

Mr. Bulkley: Just wait a minute. Just answer that question.

Q You say you don't recollect having said that?

A. I do not.

Q Do you know whether you did say that to him or not?

A I would say that I didn't say it.

Q Will you please point out on that drawing you find this ignition finger to which he referred in this statement?

A It is marked No. 4.

Q What does that do?

A The ignition tripper finger is No. 4. It extends upward and presents a face to receive the effort from the engine through push rod No. 12 for rotating through a small arc rotor.

Q You had that same finger, that ignition finger, in all of the other forms of low tension magnetos which you had formerly developed?

A It had been in a vertical position in all of the forms. However, the edge was down instead of up. It meant a change in the movable electrode only.

Q Was that criticism if it was made a just and right criticism about it?

A It would not be a just or right criticism.

Q Why not?

A Because it had been my effort from the very beginning to fix it so that we could work with a direct thrust. In the single link machine to which I have referred, and the double link machine, they both carry that feature.

Q Both work in the same way?

A Both work in the same way so as not to change—so as not to have to change the cam shaft of the engine.

Q That was the reason for having the finger point up?

A It was not necessarily the reason for having it point up. It would work either up or down, just so it was in the vertical position.

753 Mr Bulkley: If your Honor please, it is stipulated, as

I understand it, by Mr. Williams, that the bill of \$82 and some cents, being the bill for services of Brown & Williams, rendered to Mr. Milton for the preparation of his application of October 1910, was paid by the Webster Electric Co. Is that right, Mr. Williams?

Mr Williams: Yes. I believe I gave you the date, did I not, when it was charged to the Webster Electric Company?

Mr. Bulkley: No, I do not think that I heard the date.

Mr. Williams: What was the date?

Mr. Bulkley: That can be added to the stipulation.

Mr. Williams: I will stipulate the fact, but I would like to just put in the date, when that was.

Mr. Bulkley: Very well. Now, I am going to offer two more letters from Mr. Milton to Mr. T. K. Webster.

Mr. Williams: May I interrupt, to say that the bill was paid, or charged to the Webster Electric Company, on March 31, 1911.

Mr. Bulkley: Yes, The same (indicating letters) to be marked in evidence as Defendants' exhibits.

The Court: I think you testified, Mr. Milton, that you paid some part of the expense, somewhere along the line?

A Your Honor, I paid the filing fee of \$15, with a postal money order.

The Court: Yes. I remember that. That is all you paid?

A That was all.

Q Will you look at this letter, Mr. Milton, and examine it, and tell me, if you can, when you got it, and where you got it, and who wrote it, and whose signature there is to it (handing one of said letters to the witness)

A The letter of December 3, 1910, from Brown & Williams, addressed to me, care Webster Electric Company, 754 Tiffin, Ohio, which I received in due course.

Mr. Bulkley: Offered as Defendants' Exhibit, to be marked defendants' exhibit number 34.

Mr. Bulkley: Q Look at this letter, and tell me about that (handing the other of said two letters to the witness).

A Letter of February 9, 1911, from Brown & Williams, addressed to me, care of the Webster Electric Company, Tiffin, Ohio,—which I also received.

Mr. Bulkley: Offered as Defendants' Exhibit 35.

Mr. Bulkley: Q Look at this letter (handing another letter to the witness).

A Letter from Mr. Lynn A. Williams, of February 7, 1911, addressed to me, care of Webster Electric Company, Tiffin, Ohio, which I received shortly after that time.

Mr. Bulkley: Letter of February 7, offered Exhibit 36.

Mr. Bulkley: Q How about this letter, that I now show you (handing another letter)?

A Letter from Mr. Lynn A. Williams, of October 25, 1910, addressed to me at Tiffin, Ohio, which I received with the formal application for a patent, to be executed by me, on my United States case No. 10.

Mr. Bulkley: Offered, letter of October 25, 1910, and marked as Defendants' Exhibit 37.

Mr. Bulkley: Q What is this letter which I show you (handing another letter to the witness)?

A This is a carbon copy of a letter which I addressed to Mr. Webster, care of the Webster Manufacturing Company, Chicago, Illinois February 8, 1911, dealing with my United States patent application No. 589,564, which was my case No. 10.

Mr. Bulkley: Offered, to be marked Defendants' Exhibit 38.

Mr. Bulkley: Q What is this one (handing another document to witness)?

A This is a carbon copy of a letter which I wrote from 755 Tiffin Ohio, October 10, 1910, to Mr. T. K. Webster, care

Webster Manufacturing Company, Chicago, dealing with the same subject matter as the immediately previous letter.

Mr. Bulkley: Offered, marked Defendants' Exhibit 39.

Mr. Bulkley: We offer in evidence a letter of one Waterman to Experimental Department, Harvester Company, under date of February 16, 1909, which has been identified in evidence, to be marked as Defendant's Exhibit 1.

Mr. Bulkley: We also offer in evidence a letter of April 6, 1909, from Waterman to Maurice Kane, heretofore identified in evidence as Defendant's Exhibit 2, to be marked in evidence as Defendant's Exhibit 2.

Mr. Bulkley: We also offer in evidence a letter of T. K. Webster to John L. Milton, dated May 21, 1909, heretofore identified in evidence as Defendant's Exhibit 8, to be marked in evidence as Defendant's Exhibit 8.

Mr. Bulkley: We offer letter to T. K. Webster, dated May 24, 1909, heretofore identified as Defendant's Exhibit 9, to be marked Defendant's Exhibit 9.

Also, letter of T. K. Webster to John L. Milton, dated May 1, 1909, heretofore identified in evidence as Defendants' Exhibit 10, to be marked in evidence as Defendants' Exhibit 10.

Also, letter of T. K. Webster to J. Milton, dated May 6, 1909, heretofore identified in evidence as Defendants' Exhibit 11, to be marked in evidence as Defendants' Exhibit 11.

Also, letter from T. K. Webster to J. M. Milton, May 8, 1909, heretofore identified in evidence as Defendants' Exhibit 12, to be marked in evidence as Defendants' Exhibit 12.

Also, letter of T. K. Webster, Webster Manufacturing Company, May 8, 1909, heretofore identified in evidence as 756 Defendants' Exhibit 13.

Also, letter of April 22, 1909, T. K. Webster to John L. Milton, heretofore identified in evidence as Defendants' Exhibit 15, to be marked in evidence as Defendants' Exhibit 15.

* * * * *

Mr. Bulkley: Look at this letter, please, Mr. Milton, and state where you got it, where it came from, who wrote it, and when you got it.

(another document was handed to the witness).

A This is a letter of June 2, 1916, from the Webster Electric Company, by Mr. Walter Brown, General Manager, addressed to me, at Detroit, Michigan, which I received on the sixth of June, 1916.

Q Do you know when the last of those notes referred to in that letter were paid to you?

A June 12, 1916.

Mr. Bulkley: The letter of June 2, 1916, identified by the witness, is offered, and marked Defendants' Exhibit 40.

* * * * *

Mr. Bulkley: Q Look at this letter; what is that, when did you get it, and from whom?

(The document was handed to the witness.)

A Letter of November 19, 1915, which I received in due course of time, from Mr. Lynn A. Williams, addressed to me at Detroit, Michigan, which I received.

Mr. Bulkley: Letter of November 19th offered, and marked as Defendants' Exhibit 41.

* * * * *

Mr. Bulkley: Q Look at this letter, and tell me if you know anything about that, and when you got it.

(Counsel hands document to witness.)

A This is a copy of a letter, a carbon copy of a letter 757 that I dictated to Mr. M. V. Couchman, International Harvester Company, at Hamburg, from the Anglo-American Oil Company's office, London, England, under date of November 10, 1909.

Mr. Williams: Let me see that a moment, before you proceed, will you?

(Document handed to counsel.)

Mr. Bulkley: Offered in evidence, the letter of November 10, 1909, marked Defendants' Exhibit 22-A.

Mr. Bulkley: Look at this letter, and tell me about that (handing document to witness).

A Another copy, of the same letter.

Q Look at this one (handing another document to witness).

A A carbon copy of a letter, that I sent to Mr. Lynn A. Williams, under date of November 29, 1915, from Detroit, Michigan.

Q Which one of those was it that I showed you (indicating two papers)?

A The carbon copy (indicating).

Mr. Bulkley: Letter of November 29, 1915, offered, marked Defendants' Exhibit 42.

Mr. Bulkley: Q Look at this letter (handing same to witness). What is that?

A This is a letter, a carbon copy, dictated in the Anglo-American Oil Company's office, in London, under date of November 10, 1909, to Mr. T. K. Webster, President of the Webster Manufacturing Company, Chicago.

Mr. Williams: Q What was that last?

A Addressed to Mr. T. K. Webster, President of the Webster Manufacturing Company, Chicago, Illinois.

Q Let me see what that is.

(Letter handed to counsel).

758 A It was dictated by me.

Mr. Bulkley: Q Well, what did you do with it after you dictated it?

A Mailed it to Mr. T. K. Webster.

Mr. Bulkley: Offered, and marked Defendants' Exhibit 22-B.

Mr. Bulkley: Q Now, look at these two letters here, and give us the dates of them, and tell us where you got them, and all about them. (Handing two documents to the witness).

A Carbon copy of a letter dictated by me June 6, 1916, to Mr. N. S. Milton, National Bank of Kentucky, Louisville, Kentucky. The other one is a letter that was dictated June

6th, and written June 7th, 1916, and sent to the Webster Electric Company, Racine, Wisconsin, dictated by me.

(Objection to offer of first letter—offer withdrawn.)

(The document last referred to by the witness, as to the Webster Electric Company, Racine, was thereupon admitted in evidence, marked as Defendants' Exhibit 43, the same being in the words and figures following, to wit:)

Mr. Bulkley: Q Now, Mr. Milton, were you ever requested at any time, by Mr. Williams, or anybody representing the Webster Electric Company, to give to it what is called technically a concession of priority of invention to this same subject matter with which this lawsuit is concerned?

A Yes, I had a letter from Mr. Williams.

Q What did you understand to be meant by a concession of priority?

A Why, to concede that I was not the original inventor of this subject matter.

759 Q Now, how was that request communicated to you? In writing, by letter, or orally?

A It came by letter, with an enclosed form for me to execute.

Q Have you got that letter?

A I have.

Q Will you produce it, please?

A There is the letter, and the form, and my reply is on the back. (producing papers).

Mr. Williams: Q What was your answer?

A There is the letter, the form, and my reply is on the back of the letter.

Mr. Bulkley: Q This reply does not appear to be signed, Mr. Milton?

A Well, that is a copy of my letter.

Mr. Bulkley: The letter referred to by the witness as having been received by him from Mr. Lynn A. Williams, dated September 11, 1916, is offered, together with the form, so-called, and the copy of the reply of Mr. Milton to the firm of Williams, Bradbury & See, on the back of one of those papers, is offered, and marked in evidence, Defendants' Exhibits 44, 44-A and 44-B.

(The said documents were thereupon admitted in evidence, marked respectively as Defendants' Exhibits 44, 44-A and 44-B, the same being respectively in words and figures following, to-wit:)

Mr. Bulkley: Q Now, Mr. Milton, going back again to the conversation which you had with Mr. Webster, when you learned that the Harvester Company would not permit the use of the boss any more for the attachment of the magneto, when did that conversation occur with reference to the time that you commenced to work with Mr. Kane?

760 A Oh, it was prior to that time. You of course have reference to the time when I started Mr. Kane to make the design.

Q Yes, sir.

A On this unitary structure.

Q Yes, exactly. Did you have any negotiations, Mr. Milton, with reference to the sale of your patents, including this patent No. Where is the patent in suit?

The Court: 1,280,105.

Mr. Bulkley: Yes, 1,280,105.

Q Did you have any negotiations with reference to the purchase of that patent and other patents of yours by the Webster Electric Company, or the Webster Manufacturing Company?

A I do not quite understand, Mr. Bulkley.

Mr. Bulkley: Yes. I thought that was the Milton number.

Q Did you have any negotiations with the Webster Electric Company, or the Webster Manufacturing Company, with reference to the purchase of your patent No. 1,096,048, being the Milton patent, covering the unitary structure?

A At any time?

Q Yes.

A Any representative of theirs?

Q Yes.

A Yes, sir.

Q When was that?

A According to my best memory the negotiations for the sale of those patents started sometime after January 1st, 1912.

Mr. Williams: Q What are you saying, Mr. Milton, please?

A Sometime after January 1, 1912.

Mr. Bulkley: Q And what resulted from those negotiations?

A The negotiations took form before I actually came in contact with the representatives of those companies, through

Mr. Walter C. Teagle, who was in conference with Mr. 761 Becker, and I believe other representatives of the Webster Company.

Q Then what happened? What resulted? Were they purchased from you?

A It resulted—

Q This patent, and others?

A It was purchased from me, according to my best memory, in April, 1912, or their agreements were signed about that time.

The Court: Q Do you mean selling your patent to the Webster people?

A Selling it to the Webster Company.

Mr. Bulkley: Q What Webster Company? Do you remember what Webster Company?

A Well, as I remember it, the Webster Electric Company, and Webster Manufacturing Company were both parties to it. There were a series of contracts, some six or seven of them, dealing with licenses, and—

Mr. Bulkley: We will show that to your Honor later.

A It was a very complicated settlement. I have all the papers here, however.

Q Did you have any patent attorney or patent counsel in connection with this patent which you obtained, and which structure, except Mr. Lynn A. Williams?

you sold to the Webster Company, covering the unitary

A I did not.

Mr. Bulkley: Q Or in connection with the interference proceedings?

A I did not.

Q Mr. Milton, I believe that I forgot to ask what your present occupation was. Will you tell us that?

A Ignition engineer.

Q And by whom are you employed now?

A I am not working for anybody; I am working for my own account.

762 Mr. Bulkley: That is all.

Cross-Examination by Mr. Williams.

Q Mr. Milton, how long have you and I been acquainted?

Mr. Bulkley: Just a moment, Mr. Williams. There is one inaccuracy of statement in this record here; I do not know

how it crept in; and I would like to ask the witness, with reference to it, not directly in connection with—Mr. Milton, that conversation which you and Mr. Podlesak had, when the Merwin engine was there,—who suggested the extension of the pad from the igniter opening?

Mr. Williams: I object to that, as being leading.

The Court: Oh, he may answer.

A That was my own suggestion.

Mr. Williams: Is that all, Mr. Bulkley?

Mr. Bulkley: Yes.

Mr. Williams: Q How long have you and I been acquainted?

A From, I think, 1907; I think it dates back to 1907 or 1908.

Q You and I have had a good many and pretty frequent conferences about all these matters that you have testified about, have we not?

A Quite a number of them.

Q Well, we have had scores of them, have we not?

A I have not chalked up the record, but I know we have had a number of conferences on the various cases that you have handled for me. I think you have handled from case No. 5— You handled three, four, five, on through to fifteen.

Q Now, you said during your direct examination that you had been inspired to right some wrong. Now, who was guilty of the wrong that you are righting?

A In the testimony, as is on file in the case here, as given by a number of different parties, it seemed to me to be very inaccurate.

763 Q Who were those parties?

A Mr. T. K. Webster, and Mr. Chiville, and Mr. E. J. Kane, and Mr. J. A. Munn, as I recall them now,—the inaccuracies of each one of their statements, as it appeared to me.

Q And who was wronged by these inaccuracies?

A The subject matter of invention, of which I am very jealous,—the claims of that patent were taken away from the patent, and put into another patent.

Q Well, you are the party wronged, then?

A Yes.

Q I beg pardon?

A Yes.

Q You mentioned a man by the name of McCarthy, if I understood correctly, during your direct testimony. He, if I

understood, had nothing to do with experimental work, but rather with commercial manufacture, in connection with the Webster Manufacturing Company's plant; is that correct?

A He furnished us with parts, and occasionally would lend us a man for this experimental work; sometimes the work would be done in his shop, under my direction, or sometimes the man would come up to our department, and work.

Q Do you know where he is located now?

A He is in the employ of the Webster Manufacturing Company, Skillin & Richards plant.

Q The what?

A The Skillin & Richards plant; I do not know the rest of the style of the firm.

Q Have you seen him recently?

A I saw him either last week or week before.

Q About this matter you have been testifying about?

A Yes, sir.

Q Where is this man Kroeplin located, that you have referred to?

A He is here in Chicago.

764 Q Do you know where he is employed?

A He is working for himself. I do not know the style of the firm. He was in the courtroom here at noon today.

Q He was? When did you see him last before seeing him here this noon?

A I have seen him two or three times since this case opened.

Q And talked with him about these matters that you have been testifying about?

A Yes, sir.

Q You said you talked with one of the Podlesaks up at Racine, if I remember correctly, within the past month, about these same matters?

A The early part of December.

Q How?

A The early part of December, or the last of November.

Q That was Emil Podlesak, was it?

A Emil Podlesak.

Q Now, Henry Podlesak, have you talked the thing over with him?

A I have.

Q When?

A Since the case has opened.

Q Whom else have you talked the thing over with, in the last month or two or three?

A Do you mean the lawyers or the experts or individuals?

Q Individuals, as you draw the distinction?

A People disconnected with the case.

Q What?

A People disconnected with the proceeding?

Q Tell me whom you have talked with, separating them.

A I have talked with Mr. Sturtevant, Mr. Mason, Mr. Peeks, Mr. Carter, Mr. Bulkley, and I have talked to you; I have talked to Mr. Walter Brown; I have talked to Mr. McCarthy. And do you want everybody I have talked to.

Q Well, you know, people like Kroepin, or Podlesak, or McCarthy, or Manning, or any of those people.

A I talked with Mr. McCarthy, Mr. Kroepin, Mr. Robert Freeman.

Q Mr. Robert Freeman?

A Yes, sir. I talked with Lou Solomon.

Q Anyone else?

A Talked to Mr. Murphy.

Q Anyone else?

A Yes, sir.

Q How?

A I think so.

Q I hardly hear you?

A I think so. I am trying to recall all these different parties. There are a great many of them. It has been a general topic for conversation for pretty nearly four weeks, and I have talked to—

Q Mert Merwin? Did you talk with him?

A I was just going to mention Mr. Merwin. Mr. John Anderson. Mr. George Fife.

Q Mr. George who?

A Mr. Fife, F-i-f-e.

Q Fife?

A There may be some others. I think that's the ones you mean—

Q Who is this Mr. Freeman?

A Robert Freeman was one of the engineers of the Webster Manufacturing Company.

Q Where is he employed now?

A He is still with the Webster Company.

Q Who is this Solomon?

A He was the engine expert of the Webster Manufacturing Company.

Q Where is he employed now?

A He is still with the Webster Manufacturing Company.

766 Q Who is this William Murphy?

A He was with the Sales Department of the Webster Manufacturing Company, and attended some of the State Fairs in connection with the exploitation of the Milton Magneto in connection with the Harvester Company.

Q Where is he employed now?

A The Webster Manufacturing Company.

Q When you say Webster Manufacturing Company, you are distinguishing it from the Webster Electric Company, the plaintiff here?

A Absolutely, yes, sir.

Q Who is John Anderson?

A He is the foundry manager of the Webster Manufacturing Company and a stockholder in the company and he has charge— But he is no longer with the Webster Manufacturing Company.

Q Where is he now?

A Here in the court room.

Q Where is he employed, if you know?

A I think he is not employed by anybody. I think he is a retired capitalist.

Q You mentioned George Fife. Who is he?

A He is connected with the foundry of the Webster Manufacturing Company. He was very active there.

Q He was what?

A He was very active there at the Webster Manufacturing Company when they were here in Chicago.

Q Where is he employed now?

A I don't know just what his commercial relation is at the present time.

Q Where is he located?

A He is here in Chicago.

Q Do you think of others that you have talked with?

767 A I have talked to Mr. Manning.

Q Well, I mean other people that had any relations with any work of yours prior to 1911, say.

A I don't recall any others right now.

Q Now, as to the papers to which you have been referring, most of those papers which you have identified are papers

produced from your own files, are they not, and turned over to counsel who submitted them to you?

A Yes, sir.

Q Now, you have a lot of other papers here in addition to those, have you not?

A I have a great many other papers.

Q Relating to your work while you were connected with the Webster Company, are they, those papers?

A Some of them deal with that subject. Some of them deal with general correspondence of a personal nature that took place about that time.

Q Have you shown them to counsel for the defendant, those papers?

A No, I don't believe I have shown any of those papers to counsel other than this complete file of my application in case No. 10.

Q You have here other papers that you have been over with them, have you not?

A I don't believe I have other than what is in this particular file.

Q I don't know about the particular file. I am talking about letters.

A That is the file in case 10.

Q I would like to know if you have other papers here which you have talked over with counsel for defendants, and which have not been submitted to you on the witness stand?

A I have.

768 Q Those you have here?

A I have.

Q Where did you get those papers; all the papers, the ones that have been shown to us and those which have been offered in evidence here; where did you get those papers?

A I think every paper without exception came from that same steamer trunk that you and I opened together in Detroit.

Q When was that?

A When you were there in October of 1916.

Q So that all that have been offered and all that you have brought with you as having any possible bearing upon anything that relates to the subject matter of this suit, they all came out of that same trunk, did they?

A I think every one of them did.

Q That trunk was down in the basement of your apartment building in a little store room, wasn't it?

A Yes, sir.

Q And you and I went down there one night right after dinner, didn't we?

A Yes, sir.

Q And we got that trunk open?

A Yes, sir.

Q And we went through every single last paper in that trunk did we not?

A We did not.

Q Didn't we?

A We did not.

Q What?

A It would have taken two or three days to have done that, I believe. We went through the files that I thought would have a bearing on that matter. It was my general files; it was the case No. 10, and miscellaneous blue prints, miscellaneous patents, sketches, and copies of patents, 769 as I recall it.

Q Were you searching honestly when we went through that trunk for anything and everything that might have any possible bearing upon the subject matter of this patent of yours?

Mr. Peaks: I object to that. I would like to have that question read.

(Question read)

Mr. Peaks: I object to the word 'honestly' in there.

Mr. Williams: I would like to have the objection sustained if it should be, and I will ask another question.

The Court: Ask your other question.

Mr. Williams: I will substitute the word 'diligently' for 'honestly.'

A As time would permit and my knowledge of the case at that present time, I made a thorough search to give you everything that I thought would help you. I went further and sent to Louisville and got more papers that I thought would help you, because I was very anxious to set up that date and maintain it.

Q Then we went over those other papers, later, did we not?

A I did.

Q Mr. See did, from my office, didn't he?

A Mr. See and I made another search together, yes, sir.

Q Went through those papers from Louisville?

A I don't think we went through all of them. I doubt if we went through any of them, because I went through those papers and didn't find anything that had direct reference to this particular case, other than what I had already presented to you.

Q To me?

A Yes, sir.

Q That is the result of getting the papers from Louisville, and to the best of your ability, making a diligent search and study through them did not reveal anything of any pertinence other than what I had ready learned at the time of my search with you, is that it?

770 Mr. Peaks: I object.

The Court: He may answer that.

A As the conditions had developed at that time, there was nothing that impressed me or my mind as being of any further importance, and further bearing on it.

The Court: Did you later find that those things were important?

A I did.

Mr. Williams: Those other important papers have been offered in evidence here, have they, those you refer to?

A Yes, sir.

Q Which papers are those?

A They are the blue prints that refreshed my memory very considerably on various stages and developments from the Longenecker type of machine through to the completion of the Unitary plug, magneto bracket structure.

Q That is to say, these blue prints which are marked defendant's Exhibit 17—

A That is it

Q Just a moment. Defendants' Exhibit 18 and Defendants' Exhibit 19, are they?

A Those three are.

Q Now, these other blue prints, Defendants' Exhibit 21—That, as I understand you, was one that I had seen when you and I—that I had seen with you, and which we have known all about from the beginning?

A Another print of the same tracing, but not this particular piece of paper.

Q A duplicate?

A Yes, or it may have been an assembly of that same subject matter, I cannot say at this time, because I don't remember definitely, but it was the same unitary structure.

Q And the approximate date of this one is June 3, 1909?

771 A I judge that it was; I cannot say definitely because I have not the prints before me.

Q It was not earlier than that, was it, in date?

A I hardly think it could have been.

Q You do not know of any other than shows what is shown in this Exhibit 21 on a date earlier than June 3, 1909, do you?

A I don't know of any.

Q You would know now if you are ever going to know, I presume?

A I would say so—

Q Now, these three Defendants' Exhibits 17, 18, and 19, those, as I understand you, are important papers which for some reason or another were not discovered at the time of my search with you, or at the time of Mr. See's search with you, is that correct?

A I think at the time of Mr. See's search two of those papers were unearthed.

Q Which two?

A This one and—

Q Marked what?

A 17 and 18, I think.

Q 17?

A 17 and 18.

Q Neither of these shows the subject matter of your patent No. 1096048?

A (It does not show the subject matter of them)

Q Nor does the other important one there, Exhibit 19, does it?

A It in itself does not.

Q I talked to you about this date of October 6, 1915, did I not?

A October 6, 1915, was the date.

Q And we went through this trunk together, and we picked out everything that at that time either of us thought could have any possible bearing upon the subject matter of the interference; and did I bring those papers with me, take them away with me?

772 A You took one blue print, and took a memorandum for the rest of them, and Mr. See got the ones he wanted on his return, but we did not go through all the trunks; we only went through certain sections of files that we thought had a bearing on it. The date there had some 25 or 30 patent applications besides the correspondence extending over a

period of 10 or 15 years, so we did not go through all of it, I know.

Q We worked there until about midnight, didn't we?

A Until the train time, I would say.

Q It was pretty near midnight when we quit looking, wasn't it?

A I know it was quite late.

Q You said at that time to me, didn't you, that we had seen and found there everything that there was relating to the matter so far as you knew, except that there might be some further papers possibly in Louisville; isn't that substantially correct?

A I don't think that I ventured a statement of that kind, because I know it means a lot of work to make a full search, and this print No. 17, is just an illustration of what I say. This Exhibit 17 was one print I found—I didn't find until last Sunday, and I have been through that trunk a number of times since looking for that and found it in a stray file. It did not come from Louisville.

Q Have you been through everything in the trunk now?

A I have not.

Q There are still things there now?

A There are things that pertain to other subjects that I am sure have no bearing whatever on this.

Q Were you equally sure when you and I stopped at midnight on October 6th that you had found everything that had any bearing upon the subject matter here?

A As I recall it, your insistence was to find something, some sketches that you could use to substantiate the date,
773 some sketches where I had shown it to somebody else that I was sure I did not have.

Q And you never have found anything like that?

A I have not found anything like that.

Q Now, when I left Detroit, left you that night, you told me that you would send to Louisville or go to Louisville and get some additional papers?

A I did.

Q And you got those papers?

A I did.

Q And then you went through them, did you not?

A I have been through them.

Q Did you advise me subsequently that nothing further—that you could find nothing further in it?

A I think that I told you in person that I had been through

them and did not find anything of the character that you were looking for, or any prints or drawings that would show that particular device.

Q Then it was on May 8, 1916, following this search which you and I made that Mr. See of my office met you in Detroit, was it not?

A I judge it was about that time. I have the exact date here recorded if you want it.

Q Let us have it. You have letters that will fix that, have you?

A Yes, sir.

Q Won't you look at them and fix that date?

A The letter of Mr. Robert M. See addressed to me in Detroit, starts: 'Dear Mr. Milton: As I promised this is to make a record of the facts that I have taken from among your data relating to the Milton case 10, the following items.'

Q Perhaps since you have read that you better read the rest, read the list.

A '1. Photograph of experimental magneto on the Brundage engine. 2. Photographs of new magneto on International Harvester engine. 3. Three photographs of the new magneto disassembled and assembled. 4. A leaflet entitled 'Milton Magnetos' published by the International Harvester Company. 5. Booklet entitled 'Milton Magnetos' published by the Webster Manufacturing Company. 6. A booklet entitled 'Webster-Milton Low Tension Magneto', published by Webster Electric Company. We appreciate very much indeed'—Do you want the rest of it?

Q Yes, I think you better read all of it.

A 'We appreciate very much indeed the time and help you have given to this matter and personally wish to thank you for a very pleasant morning. It will be a great help to us if, as soon as you get to Louisville next week, you will look through your data there and send us anything that you think has a bearing on this matter, since we must decide what is to be done and act accordingly within the next couple of weeks. We hope that you can find time to pick these matters out and send them to us, if there are any, soon after you reach Louisville. Yours very truly, Robert M. See.' Did I give the date—May 9, 1916.

Q May 9th?

A May 9, 1916.

Q Does that indicate to you that it was May 8, 1916, that Mr. See talked with you in Detroit?

A It does indicate to me that it was on May 8th.

Q Now, when Mr. See talked with you he asked you not only relative to such papers and documents as you might have, and also relative to who would or might know anything about what you may have done relative to the invention involved, did he not?

A Yes, sir.

Q And you gave him the names of Abbott Munn, Gerald Chiville, and E. J. Kane as the parties who would know about what you may have done and who could corroborate your statements about the matter?

A I undoubtedly gave him those names.

775 Q Did you in talking with him, or in talking with me, ever make any reference whatever to this Robert Freeman as knowing anything about this matter?

A I am quite sure that I did.

Q What?

A I am quite sure that I mentioned it to you.

Q What did you say about him?

A That he was one of the engineers there at the Webster Company and occasionally did drafting on this matter.

Q Did you ever mention Solomon to either of us?

A I cannot say definitely whether I did or not.

Q Did you ever mention Murphy to Mr. See in talking with him?

A I am very sure I did not. I had forgotten Murphy entirely myself until this last month.

Q Did you mention this John Anderson to him?

A I don't think I did.

Q Did you mention to him this George Fife?

A I hardly think I did.

Q Did you mention to him Henry J. Podlesak?

A I may not. I don't remember whether I did or not.

Q Did you make any memorandum of the conversation, that is, any memorandum made at the time of that conversation that you had with Mr. See?

A I did not because I hated to give even an hour's time at that time to the subject. I was terrifically busy.

Q Talking with Mr. See did you ever mention this man Merwyn?

A No.

Q We both had asked you to give us the names of any people who might know anything about the matter, had we not?

A Yes, sir.

Q Now, when Mr. See talked with you on May 8, 1916, you

went over with him about all the papers and documents
776 which you had then been able to find, and which to you
seemed to have any possible bearing upon the subject
matter?

A The ones that I had gathered at that time.

Q And you promised him that when you went to Louisville
about the middle of the week of May 15th following that, you
would search there and see if you could find anything further,
did you not?

A Or else get drawings and then go through the draw-
ings which I did.

Q You didn't find anything?

A I did not find anything that would be of the nature
asked for by you or Mr. See.

Q Are you making some point of the fact that he did not
ask for—

A Oh, no, no.

Q —that we didn't ask for right now?

A No, no point on that at all.

Q You understood when we were making these searches
that you were looking and we were looking for anything that
would either show the invention or might refresh your recol-
lection or enable you to fix dates with regard to it, did you
not?

A I do not recall it as being so much in connection with
refreshing my recollection of it, as trying to get something
with which to fix the date.

Q In talking with Mr. See on May 8, 1916, you told him
the history of this magneto during the year 1908, say, and
particularly, among other things, of Longenecker's adapting
or making the tripolar oscillating form of machine, did you
not?

A Longenecker—I could not have given it that way, be-
cause Longenecker didn't make a tri-polar oscillating ma-
chine. You mean the bracket for operating it, or the mech-
anism for operating it?

Q Isn't this the oscillating—he took the Milton tripolar
machine, as I understand it, and made of it an oscillator?

A Yes, sir.

777 Q By applying springs and so forth.

A Yes, sir.

Q That is what Longenecker did?

A Yes, sir.

Q And that you told Mr. See about?

A I judge I did.

Q Now, when you talked with Mr. See on May 8, 1916, you told him, did you not, that you remembered distinctly during the experimentation to improve on the construction that T. K. Webster called in Mr. Chiville and Mr. Kane, and told them to work out at home, independently of each other, the best design that they could?

A I don't recall that as having been given exactly in that way, but I remember referring to the two men as having worked on it.

Q Didn't you tell Mr. See in substance that you remembered distinctly of Mr. Webster telling both of them to work on the thing at home, independently of each other, and to bring in what they might produce?

A I don't recall that conversation exactly that way. In fact, I don't recall that conversation exactly in any way. I remember talking on the general development.

Q Did you give Mr. See the substance of that statement that I have just given to you, in your talk with him?

A I won't say that I did or that I did not, because I don't remember specifically on that; I made no record of that conversation.

* * * * *

Q Just to get this matter straight, your talk with Mr. See was at Detroit?

A Yes, sir.

Q And there was a later conference in Chicago?

A Yes, sir.

Mr. Williams: Lots of them.

A I think you will find in the report there that I stated to Mr. See that I was very sure that I was the original
778 inventor and that I still believe that I was.

Q You say that was in this report?

A I think if Mr. See made the full report, I think you will find it there.

* * * * *

Q Would this correctly state the substance of what you have just volunteered, that you were very pleasant and expressed the desire to help us in any way that you could, and seemed willing, if need be, to sign a concession of priority to Kane, although you hoped investigation would show that you were the real and prior inventor?

A I could not have agreed to sign the concession of

priority, and I was positive in my own mind that no such facts existed.

Q Now, at the time that you talked with Mr. See on May 8, 1916, did you tell him that although both Chiville and Kane did work on some design at home, that you could not remember what Chiville suggested?

A Why, I don't remember making a statement in that way. I do know that a general conversation took place in the midst of a very busy morning, as all my mornings were, and I gave him as much information as the time would permit, but I was not able to—I did not state the matter in detail.

Q Did you on May 8, 1916, tell Mr. See that the pencil drawing on white paper signed 'E. J. Kane, April 11, 1909,' is a design that Kane worked out at that time, and that you remembered distinctly Kane submitting it to you?

A I don't think that the thing was put up to me in just that way, or if I made my statement in just that way. I would say, as I have said here, that that design was worked out under my direct instruction, and I remember the preceding designs that went ahead of that, and I remember how that thing was developed, and I remember the next stage from that. And I don't believe that—

779 Q I think I will confine your answer, if you will, to answering the question. The question is whether you said that or substantially that to Mr. See on May 8, 1916, namely that the pencil drawing on white paper signed 'E. J. Kane, April 11, 1909,' is the design which Kane worked out at that time and that you remember distinctly of Kane submitting it to you; do you remember telling Mr. See that in substance?

A Not exactly that way.

Q Where do you say now that Kane made this drawing dated April 11, 1909?

A I won't venture any statement on that. I do know that the ideas there were worked out—

Q Won't you please answer my question? The question is where he made that.

Mr. Peaks: I object to the witness being interrupted.

The Court: That is the only question, where he made it. If you don't know say you don't know.

A I don't know.

Mr. Williams: Q Do you remember Kane submitting that

drawing to you after April 11, 1909, after it was made as it is now?

A I don't recall it having been submitted as you present it to me now.

Q Did you tell Mr. See that you thought that that drawing of April 11, 1909, must have been made by Kane at a date somewhat earlier than April 11, 1909?

A I don't recall that at all.

Q Did you tell Mr. See that you remembered criticising this design shown in this drawing dated April 11, 1909, because the bracket was of such form that the part would quickly work out of alignment?

A I don't think I said that.

Q Mr. See had with him at the time of this conference, did he not, this drawing of April 11, 1909, the one you have referred to here?

780 A I judge it is the same drawing. But I have no way of identifying it.

Q You have no way?

A No.

Q He had with him also at the same time, did he not, and showed you in talking with you this other buff colored drawing marked Plaintiff's Exhibit 18?

A I have no way of identifying that, but I believe it to be the same drawing. I remember he had one.

Q Now, those photographs which you turned over to Mr. See were made, were they not, with a camera which you purchased while you were in Europe?

A The three photographs showing the magnetos disassembled, if those are the ones to which you refer, they are.

Q Therefore, those photographs were made by you after your return from Europe in December, 1909, were they not?

A That camera was purchased on my trip to Europe in 1907. It was purchased on the trip of 1907.

Q Well.—

A I will say—

Q And is this the fact of the matter, that those photographs, those pictures,—that in taking those pictures you were making a first test of the camera with a Celor lens which you had obtained from Mr. Jackson, when you traded the camera with the Dagor Lens, which you had brought from Europe, and you didn't go to Europe until August, 1909?

A That is all very incorrectly stated.

Q How?

A That is very incorrectly stated.

Q What is the fact?

A I don't remember of mentioning that to Mr. See, but the fact is this—

781 Q What is the fact as to when these particular photographs were taken?

A I purchased a Dagor Goerz lens in Europe and brought it back, brought it over and traded to Jackson and got a Celor-Goerz lens, and I had never taken any indoor photographs of objects of that nature with the camera, and I remember trying it out, and that was done before I went to Europe in 1909, because they were taken up on the third or fifth floor of the Webster Manufacturing Company, and I have never been in that building or that part of the building since my return from Europe in 1909.

Q Then the photographs were taken before you went to Europe in August, 1909?

A They were made before I went to Europe in August, 1909; I think they were made in June.

Q This Freeman that you have mentioned, was that R. G. Freeman?

A Yes, sir.

Q Did you tell Mr. See that he would not know anything about matters relative to which Mr. See was conferring with you?

A If I mentioned him, which I believe I did, I very probably said I doubt if he would know very much about it.

Q You have a lot of correspondence, haven't you, with reference to efforts made by me or others associated with me to arrange a date for you to give your testimony in this interference between you and Kane?

A I have some correspondence on it.

782 Q Now, this conference between you and Mr. See at Detroit, on May 8, 1916, was in conformity with an appointment made in advance by a letter and telegram, was it not?

A I think it was.

Q Did you receive a letter in due course of mail dated May 3, 1916, and signed by me or Mr. See or by our firm name, saying that we were making a final investigation of the facts in the interference between this patent of yours and the

Kane application, and asking for an appointment on Monday, May 8th?

A Yes, I remember such a letter.

Q Now, when Mr. See came there to see you on May 8, 1916, he had with him, as you say, these two Kane drawings of April 11 and April 14, 1909; and those you talked about. Were there any other papers which he brought with him at that time and which you discussed?

A I don't remember whether he had other papers or not.

Q Did he show you at that time the affidavits of Munn or Bruce or any of the parties that you previously named as parties who would know about the facts?

A I don't recall anything of the kind.

Q Didn't Mr. See tell you that he had been talking with these people whose names you had given as your corroborative witnesses?

A That did not make a very definite impression upon me, that whole meeting, or what transpired in that meeting. I don't remember distinctly about those points. I don't remember definitely.

Q Did Mr. See tell you what these Kane drawings purported to be, or how he had gotten hold of them or anything about them?

A I think you told me that, and I think he reviewed it.

Q What?

A I think you told me about these drawings.

Q When I saw you in October previously?

A I don't know whether it was October previous, or some time in your office.

783 Q During the interval between October and May?

A Yes, my impression is that you told me about these drawings, or similar drawings; I would not say these same drawings, but similar.

Q When you talked with Mr. See on May 8, 1916, and when he had what you say are these drawings, the same things as near as you can now identify them, you understood, did you not, that those drawings had been acquired at that time by us from Kane, didn't you?

A Yes.

Q Didn't Mr. See tell you anything about what Kane said as to the fact of inventorship?

A Yes, but I could not quote his words at all.

Q What was the substance of it?

A The substance of it was that Kane was claiming—that Kane had claimed to be the original inventor of that subject matter.

Q Didn't he tell you at that time anything about what Chiville had said?

A I don't recall definitely whether he did or not.

Q Let me see if you don't remember this now; didn't he tell you in substance this: That when he talked to Chiville, or when we had talked with Chiville, some of us, that Chiville said that he and Kane both got up designs independently, at home, and brought their drawings to the office of the Webster Company; do you remember his saying that?

A I remember hearing about that; I don't remember Mr. See mentioning it that way. That was some time ago—

Q Didn't he tell you, or didn't some of us tell you, if you don't remember who it was, that Chiville said it was Kane who brought down for the first time and showed for the first time this design?

A I don't recall it that way at all.

Q Did not you get the idea from any of us that Chiville, instead of corroborating you as you had said that he 784 probably would, corroborated what we told you Kane would testify to; didn't you learn that at that time?

A I learned at some time during this period that Chiville would make a statement that he thought that Kane designed that.

Q Didn't you learn from some of us also that Mr. Munn, Mr. Abbott Munn, whose name you had given us as one of the witnesses who would know most about the facts and would corroborate you, that when we went to see him he gave us information which failed to corroborate you absolutely?

A I understood that Munn was going—whether I got it orally or by letter, I don't think it was by letter, I got it orally from somebody, I think, that Munn was going to substantiate my claim and afterwards when Mr. See, or somebody, came over with some subsequent data, he had switched entirely. Now, I got that definite impression.

Q Whom did you get that from?

A I got it, I am quite sure, from you, or somebody in your office; I think it was you.

Q When was it we told you he switched?

A I don't know when it was. I think it was probably when Mr. See was over there.

Q Now, let me see if this does not refresh your recollection: You and I saw each other quite frequently during this interval here in Chicago; you were here frequently, were you?

A Yes, sir.

Q Didn't I first show you or state to you the substance of a letter which I had received from Mr. Brown of the Webster Company giving his conclusions as to an interview that he had had with Munn, in which Mr. Brown said that Munn knew of the invention having been made, or believed that you made it, or something of the same general statement, some general statement of that sort, and that when we came actually to talk with Munn that we found that he could not—that the facts were not in conformity with what Mr. Brown had written in his letter; isn't that the fact of the matter?

785 A It may have been that it came that way, but I got the definite impression, as I stated to you, that Munn was counted on to testify one way, that he switched. It may have come that way that I got that.

Q Did you get the impression that he switched his own ideas, and changed them, or that we found out that his recollection was different from what we believed it would be?

A I don't know how that came about.

Q We told you at any rate before any of this testimony was given, and you understood what Munn's recollection was, did you not?

A Before I gave my testimony?

Q Yes.

A Yes, sir.

Q That you understood?

A Yes, sir.

Q Had you seen his affidavit covering the matter at that time?

A I don't recall ever having seen his affidavit until Mr. Bulkley read sections of it.

Q I don't mean his deposition, his testimony; I mean his preliminary sworn statement; that is a statement concerning the matter sworn to by him before any testimony was taken. Do you recollect seeing that at any time?

A I don't recall that.

Q You don't recall that?

A I do not.

Q Now, can you by reference to your papers, or independently of them, state what efforts were made between you and me, or between you and my office, to make an appointment at which to take your testimony in this interference case?

A I know you tried a number of times to do it.

Q I did. Have you got papers that will enable you to give the date?

786 A I probably can find them.

Q I don't care to have you read all the letters, unless you want to, but if that will enable you to state exactly what occurred, I wish you would do it.

A I have a letter here of May 3, 1916, which is making an appointment to see me in Detroit. One of October 30, 1916, dealing with the taking of testimony. Another of December 1, 1916, dealing with the taking of the testimony. Another of December 18, 1916, on the same subject.

Q You say that those letters deal with the taking of the testimony. Will you say just briefly what they are, what the letters say.

A This one says, under date of December 1st: 'I wrote you with reference to taking your testimony in the Milton-Kane interference. Under date of December 5th you advised us that if you could possibly do so you would endeavor to give us the testimony before December 15th. That date is now past. The only way in which your testimony may be taken and used will be to stipulate that it may be taken *nunc pro tunc* I am not attempting to pronounce it—'as of the earlier date. If you can arrange to give your testimony within the next week or ten days, we are hopeful that it will be held not to be too late to be of value.— Will you, therefore, advise us immediately whether you can see your way clear to handle the matter within that time.' On December 27, 1916— Do you want the whole letter?

Q Just a moment. Is it not a fact that you wrote my firm under date of December 26, 1916?

A Yes, I wrote you on that date. I have a copy here.

Q That letter read as follows, did it not: 'The strain of breaking up our factory and office, as well as its organization, and trying to reorganize my home during the past two months has proven more than I can stand. Last Monday a week ago I left the office and have been ill and unable to attempt to do

any work until this morning. I find your letter of December 18th, which I regret has remained unanswered.

Even though there has been volumes of my work unfinished during this moving, and there still is, I will make every effort to give the testimony for which you have asked. I have not and will not have an opportunity to go through any of my records, so I would ask your representative to bring with him the records which we went over when I was in your office in Chicago. This will serve to refresh my memory on the subject. I would suggest that the testimony be taken in the afternoon and you have a preliminary conference in the morning of a given day. I do not know the significance or the ethics of taking the testimony of a later date as of an earlier date. As you suggest, before giving the testimony, I will get enlightenment on the subject. I regret that it has been physically impossible for me to try to attend to the business demands of my own company, and still have not found time to serve you in this matter.' Is that correct?

A Yes, sir.

Q Then did you receive a letter from my office dated December 27, 1916, acknowledging the receipt of your letter of December 26th, and saying that we note that you will in all probability be able to give your testimony in the Milton-Kane interference in a week or so. Almost any day that will suit your convenience will be all right with us?

A Yes, I have that letter before me.

Q And in that letter we suggested also, did we not, or proposed in that letter, did we not, that we would go to Cleveland and arrange to confer with you in the morning in order that your testimony might be taken in the afternoon?

A Yes, sir.

Q Then do you find a letter of December 1, 1916, to you from me or my firm?

A I mentioned that one. I have it here before me.

Q In that letter we asked: 'Kindly advise us, will you not, at your earliest convenience whether or not you see your way clear to giving this testimony before December 15th.'?"

A The letter of December 1st?

Q Yes.

A Yes, that is here.

Q Now, the suggestion which you made in your letter of December 26, 1916, that we have a preliminary conference

in the morning, was for the sake of reviewing again all of these papers that had been accumulated by me and Mr. See in our previous conferences with you, in an effort to get together all the documentary evidence bearing upon this question of inventorship?

A And also in addition to that to prevent taking too much time continuously away from my regular work, which was very pressing at that particular time.

Q As I understand it, it was on January 4, 1917, that you gave your testimony in this interference between Kane and Milton, was it not?

A About that time. I have it exactly here. Your letter of January 5th carries a copy dated January 4, 1917.

Q You understood from them and from Mr. McCaleb at that time that the testimony on behalf of Kane had already been taken, did you not?

A It is my impression that you did.

Q Don't you remember our saying to you that we would put to you any questions that you might suggest in order to give you the fullest opportunity to tell the facts relating to the matter of his invention?

A Yes, I remember such a statement in substance, your statement was in substance that—

Q Don't you remember that we showed you at the same time, not a printed copy, but the typewritten copies of the testimony given by the other witnesses, that is, Kane and his witnesses, just before you testified?

A If you did, I did not read them because this whole thing was done in a very short period, probably an hour or an 789 hour and a quarter.

Q They were there and you were told before you finally testified at any rate what the testimony of Kane and Munn and T. K. Webster and these other parties had been, had you not?

A If it had been told to me it was not told to me in such a way that I could remember and repeat it.

Q You were explicitly given the opportunity by us at the time you testified on that very day, were you not, the opportunity to go over all of the testimony that had been given by Kane, and by his witnesses, and to refute it or rebut it in any way that you could. That is true, is it not?

A I do not recall having seen the copies of it, or even if they had been there I could not have taken time at that par-

ticular hour to have done it, and I mentioned to you, or before I went into Mr. McCaleb's office in connection with that, that I did not quite understand this sort of proceeding any way, where you could represent both sides of the case. I thought the thing was largely in your own hands.

Q What both sides did you refer to in saying that?

A Kane's side and Milton's side; that I felt whatever effort that I might make, that I would be absolutely helpless and the thing would be as you wanted it and so mentioned it.

Q To me?

A Yes, and you said that you would put the facts up to the Patent Office and let them decide. That was your answer. I remember that very distinctly.

The Court: Were the Kane application and the Milton patent both owned by the Webster Company then?

Mr. Williams: Well, now, I think the arrangement was, and I have seen some letters here which may indicate the contrary today, but I expect to look them up, I think the fact was that Milton had put his applications and patents at that time in trust to secure the payment of some notes, and 790 when the notes had been wholly paid by the Webster

Electric Company, then the trustee was authorized to execute an assignment to the Webster Company, and that in case the notes were not paid then the trustee was to make a transfer back to Milton, so that he had to that extent the beneficial interest under the trust, it has been my impression—I am answering it just as honestly as I can or as frankly as I can at the moment—it had been my impression that Milton at that time and for some little time thereafter had that interest in that trust arrangement. Now, some letter has been offered here today which may indicate that all the payments on the notes had been then completed. Is that correct?

Mr. Sturtevant: This testimony was taken January 4, 1917.

Mr. Williams: Yes.

Mr. Sturtevant: The notes had been paid seven months before, June 12, 1916.

Mr. Peaks: And Mr. Williams was the trustee.

Mr. Williams: I was the trustee. Now, I think the fact is that I was not advised by any one of the payment of those notes. I can look it up and make sure.

The Witness: This will refresh your memory. I told you in that letter that the title had passed.

Mr. Bulkley: But you say it does not make any difference whether he held the equitable title—

The Court: It might make a difference if he had a reversion in it.

Mr. Peaks: If the notes had been paid—

The Court: Then of course he would not have any interest.

Mr. Peaks: They were paid seven months before.

Mr. Williams: Q These two drawings, Plaintiff's Exhibits 17 and 18, dated April 11 and April 14, 1909, bore those dates, did they not, when we showed them to you, Mr.

See and I, in connection with the arrangement for the 791 taking of the testimony or the investigation of the evidence in the interference case?

A I believe they are the same drawings and the same dates.

Q Now, you know, of course at the time you gave your testimony in the interference case, that the Webster Company had acquired the Kane application, did you not?

A I remember your telling me they had bought it, I remember some of the conversation connected with it.

Q I told you why we bought it, didn't I?

A You told me that you had figured that it was cheaper to buy it than to fight it, that you estimated that it would cost about as much to fight it as the price you paid.

Mr. Williams: Q Don't you know and don't you remember it was a fact that when we started into get together the evidence that we hoped to find for the purposes of this interference, that when we started you were confident that you could find papers that would corroborate what you had told me were the facts as to your having made the invention?

The Witness: Yes.

Q And you started to work, and I will ask you whether I didn't have the appearance of having started that search enthusiastically and with the expectation of finding the things that would corroborate what you said.

Mr. Peaks: I object.

The Court: He may answer.

Mr. Williams: Q I am talking now about when we first began to make the search, when the interference was first declared.

A I don't remember your asking for anything more than sketches or drawings.

The Court: You don't remember about his attitude?

The Witness: His attitude was his usual diligence, I would say.

The Court: Which you would say was considerable.

A Considerable.

Mr. Williams: Q You were very confident, were you not, when we first began to make this search, that we were
792 going to find the things that would settle the matter beyond any question, in the form of papers?

A It has been my—

Q You told me that, didn't you?

A It has been my usual experience that any well defined truth could be proven, and I felt that way about this.

Q Aside from that, you told me, didn't you, that we were almost certainly going to find papers that would corroborate what you had told me as to the date of the invention and your having made it?

A I felt so sure, and I no doubt so stated it to you.

Q Did I say anything or by my attitude give you the slightest reason to doubt that I expected that you would find the things just as you expected to find the things?

A That is—

Q That is, at the beginning.

A Just at the beginning. I am trying to separate that from your attitude a little later on, which is a little bit difficult at this time. I believe I could say that you gave me that impression.

Q Do you remember a time when I told you that we simply could not find the evidence that would corroborate you in what you said, or substantially that?

A That you had not found it. That was at a considerably later date.

Q How much later? What was that?

A I don't know. It was considerably later. I rather think it was when we were preparing to take this testimony.

Q Do you remember my telling you that these corroborating witnesses whom you had named instead of corroborating your story corroborated what Kane had said?

A I remember your telling me that.

Q Did we have any interest in the Kane application at all when I first told you that, so far as you know?

793 A I am inclined to think that when you told me that was when we were taking this testimony. I don't recall

whether that was on your visit over there or whether it was at a later time. I can't separate it.

Q When was it that you say that I told you in substance that it would be cheaper to buy the Kane application than to fight the interference?

A I think you told me that you had done it. It was after it was done. That is my distinct impression of it.

Q That is, I gave you that as the reason for having bought the Kane application, did I?

A That was the statement as I got it.

Q How?

A That is as I got it.

Q From me?

A Yes.

Q Orally, or by letter?

A Orally.

Q On September 11, 1916, or within a day or so thereafter, you received from me, did you not, a letter in which I said to you the following:

"As opportunity has offered Mr. See has interviewed all of the possible witnesses as to the inventorship of the unitary plug and bracket arrangement which is involved in Interference No. 39013 between your patent and the Kane application, and I have just been reviewing all of the drawings and reports of inventors and the affidavits of the various parties. There is no question but what there is more definite and explicit corroborative evidence to support Kane's allegations than there are to support your allegations. Under the circumstances I am convinced that we would have a better prospect of sustaining a patent containing these claims if made by Kane than if made by you."

That is what I wrote you, didn't I?

794 A September what?

Q September 11, 1916.

A Is that the one in which you asked me to concede priority?

Q The letter goes on as follows:

"Under the circumstances we should like to file a concession of priority in favor of Kane and have drawn up such a form. Will you be kind enough to execute the original copy of this concession and return it to me at your earliest convenience?"

"Please be kind enough also to have two parties sign as

witnesses to your signature. For the purposes of your records I am enclosing an extra copy which you may retain.

"Yours very truly"

and signed by me.

A That letter was received and it is Defendant's Exhibits No. 44, 44-A and 44-B.

Q In spite of that letter and the extent to which it may refresh your recollection, do you still say that I told you that we acquired the Kane patent because it was cheaper to do that than to fight it?

A I got that from you some time; I don't know when it was.

Q You did not get that in writing, I presume?

A No.

Q This matter off— This other matter that you say I told you about, namely, that we would take the evidence and put the facts in the matter up to the Patent Office and let them decide, when was it I told you that?

A I think that was just prior to the taking of the testimony I think it was the same day.

Q Just before January 4?

A I think it was on January 4, just before I went into McCaleb's room.

Q That also was something that you got from me by word of mouth, was it?

A Yes.

795 Q Didn't I as a matter of fact write you a letter, dated October 27, 1916, which you received in due course of mail following that, in which I said to you:

"We have come to the conclusion that the best way to dispose of the Milton-Kane interference is to introduce proofs as far as possible on behalf of both parties and put it up to the Patent Office to decide as to who is entitled to a patent containing the claims involved in the interference. We shall wish shortly to take your deposition in support of your side of the interference and shall consider it a favor if you will advise us rather promptly as to the earliest date within the next two weeks when it will be possible for you to give your deposition."

A I judge that that letter reached me in due course, and still I am under the impression and my best memory is that that was substantially repeated at the time I mentioned before taking the testimony.

Q Have you got that letter there?

A What date is that?

Q October 27, 1916.

A I have your letter of October 30 acknowledging receipt of my letter of October 28 which was evidently in reply to that, but I don't see your letter of October 27.

Q Let me ask you if you find there a carbon of your letter to me dated October 28, 1916, which begins: "In response to your letter of the 27th we wired you this morning as follows." Do you find a carbon like that?

A No, I do not find that.

Q Look at this paper; does that refresh your recollection as to the receipt by you of a letter from me dated October 27, 1916, and reading as I have read it to you?

796 A Yes, I remember this letter.

Q (Indicating magneto) Can you identify this, Mr. Milton?

A That is one of the magnetos we used in connection with our high tension ignition.

Q What one is this?

A Which number?

Q Well, whether it was early or late. When did this come?

A I couldn't tell you. It is one of the last ones. Just exactly what is the date of it I probably could tell by going through my prints and records, but this is one of the last ones. There is a lot of Chiville's work in it; I recognize it.

Q Is that the sort of machine that was once sold to the Cadillac Company? I mean, on which the order, the Cadillac order of those 10,000 per year was—

A Substantially the same magneto. This looks as though it might have been made at Tiffin.

Q Is this a commercial product or experimental device that you have before you?

A This is what you might term a hand made device.

Q That is, it is not a manufactured product?

A I could tell more if it was complete, but it is not complete.

Q What is the other device called, this smaller one that I hand you?

A That is one that I considered making an application on that would have been Case 11; that was never filed. I never filed an application on it, and it never was finished.

Q What is that, a high tension machine?

A It is a low tension machine delivering current for a transformer coil.

Q When you first made the high tension machines how did they compare in size with the first of these that I have just now shown you, the one which you say has evidence of Chilville's work?

797 A They were larger.

Q How big?

A Well, the ones that were made in 1907 were rectangular. This is quite a bit smaller. We got down to a point where we were changing this by eighths of an inch in diameter, as I remember, and it is very difficult for me to identify these without having them side by side.

Q Why was it, with this high tension machine, that it was necessary to make it smaller, as you say, almost by eighths of an inch in diameter? Why was that so important in the high tension machine?

A A matter of clearance. This machine, as you remember, in its operation stood vertically on a bracket.

Q Under the hood of the engine of the automobile?

A Yes, on a bracket. And the timing was affected by swinging of the field in this form.

Q And you had to have room to swing it?

A And it was according to the clearance allowed on some of the cars. If the diameter should happen to be changed, some cars it was impossible to get it on.

Q Because there wasn't room enough under the hood and around the engine to put it on?

A Around the engine rather than under the hood.

Q For that reason you had to make them smaller in order to get them into the available space, as I understand?

A That was the idea. That was true of magnetos generally, because we kept finding interferences with practically every model we sent out on some engine or some motor, multiple cylinder or single cylinder.

Mr. Bulkley: If we may suspend the examination of Mr. Milton for a moment, to take Mr. McCarthy, who is here—

The Court: Certainly.

798 Mr. Bulkley: Just a few moments.

The Court: Yes.

ALBERT C. MCCARTHY, called as a witness on behalf of the corporate defendants, having been first duly sworn, testified as follows:

Direct Examination by Mr. Bulkley.

Q What is your full name, Mr. McCarthy?

A Albert C. McCarthy.

Q And what is your present business?

A Superintendent of the Skillin & Richards plant.

Mr. Williams: What is it? I did not hear you.

A Superintendent of the Skillin & Richards plant.

Mr. Bulkley: Q Is that Company connected with the Webster Manufacturing Company in any way?

A It is owned by the Webster Manufacturing Company.

Q Were you ever in the employ of the Webster Electric Company, and, if so, when? When were you employed by the Webster Manufacturing Company, I should say?

A From 1903 to 1918.

Q Did you ever know John L. Milton?

A Very well acquainted with him.

Q How did you first become acquainted with him?

A Why, Mr. Webster introduced me to him in his private office.

Q What did he say to you, when he introduced you to him?

A He says, "This is Mr. McCarthy; this is Mr. Milton." And I shook hands with him; and he says, "I want you to take Mr. Milton around the plant"; he says, "I have hired him—" he says, "to look after this magneto that we have here." And, after taking him around, he says, "I guess 799 he can find his way back. As near as I can remember, those were his words.

Q Did Mr. Webster say anything to you about taking instructions from Mr. Milton?

A Not at that time.

Q When was that? What did he say subsequently with reference to that?

A Well, Mr. Milton, I think, went to work a few days afterward, at the plant, and Mr. Webster called me in, and told me that anything that Mr. Milton wanted, to get it out for him, and get it out quick.

Q In connection with what?

A And let anything else go, if it interfered with his work.

Q Did he specify the kind of work that he wanted you to do for Mr. Milton through your department?

A No.

Q Let me ask you, were you at that time at the head, of what department, of the Webster Manufacturing Company?

A The engine department. We built gasoline engines.

Q The machine work?

A We built gasoline engines, yes, sir.

Q Did you have in your department the work of making patterns, and castings?

A No. Only metal patterns.

Q Only what?

A Metal patterns.

Q Did you do the machine work, in your department?

A Oh, yes.

Q Did you ever, through your department, do any work for Mr. Milton?

A Yes; I done all of Mr. Milton's work up to the time that they afterward made a department by itself.

800 Q What kind of work was it that you did for Mr. Milton in your department?

A Well, magneto work. The magneto, the low tension magneto, we called it.

Mr. Williams: Q What is that? I did not hear.

A Magneto work, for low tension magnetos.

Mr. Bulkley: Q Did you know anybody about the Webster—Did you know anybody about Mr. Milton's department, by the name of Abbott Munn?

A Yes, I know him very well.

Q Well, what did he do?

A Mr. Munn really was Mr. Milton's assistant.

Q Did you ever know anybody in and about the magneto work, with Mr. Milton, by the name of Kane?

A I did not remember him. I recognized him this morning, when I was introduced to him.

Q Did you ever do any work for him, in connection with magnetos?

A No.

Q Did you ever do any work for Mr. Munn?

A Yes; that is, Mr. Munn would come to me with instructions that Mr. Milton wanted his work done; and I would get it out for him.

Q Did you ever know of this Mr. Kane, Joe Kane, in connection with this magneto work that was being conducted by Mr. Milton?

A No, I do not.

Mr. Bulkley: That is all.

Cross-Examination by Mr. Williams.

Q When was it you met Milton first?

A I do not remember the exact time. Along about 1906, I think, or 1905; I do not remember.

801 Q How long did you continue to do work in your department, as requested by him?

A Well, up to the time that they moved away.

Q When was that?

A I think it was in 1908, or 1909.

Q That who moved away?

A Well, the magneto department. They moved to Tiffin, Ohio.

Q How?

A They moved down to Tiffin, Ohio. I do not remember the date.

Q Now, as I understand you Mr. Webster, after he introduced Milton to you, put Milton in charge of your department?

A No.

Q That is not the fact?

A No, sir.

Q Well, how was that?

A He simply gave me instructions, if anything that Mr. Milton wanted, I should get it out for him. I still had charge of the department.

Q That is, your department was the manufacture of engines, was it?

A Yes, sir.

Q Now, do you know what other departments there were in that Webster Manufacturing Company's organization?

A Well, there was the foundry, and a pattern shop, and a large machine shop downstairs, that done all their elevating and conveying machinery work; and a sheet metal shop.

Q How many men were there employed in that plant, altogether?

A Altogether in the neighborhood of three hundred.

Q Now, was Milton, as you understood it, put in charge of all those different departments?

A No, sir. Milton did not have charge of any department at that time.

Q Well, then Milton came there as an inventor, as I understand, did he not, to—

A I do not know.

802 Q Well, did you understand from Webster or from Milton that he was going to do some experimental work?

A Yes, sir.

Q And that you were told, as I understand it, then, when ever he wanted any machine work done, for you to give him a man, and do it?

A That is it, exactly.

Q But you continued to run the department, of course?

A Yes, sir.

Q He had nothing to do with the manufacture of the engines?

A No, sir.

Q Well, then, it was simply, then, a matter of convenience, that he did not have enough work on the magneto to run a whole department by itself, and so Webster gave you to understand that whenever Milton wanted a little job done for this experimental work, to turn over the man and the machinery to him?

A Yes, sir.

Q And Munn, you say he was an assistant; did he do machine work himself?

A I think he did, more or less. He worked right along on the magnetos.

Q Well, with his hands?

A Oh, yes.

Q That is, making parts?

A Yes, making parts. He was a machinist.

Q Was he a machinist in your department?

A Not in my department. You see, I was in the gasoline engine department, and the conveyor machinery was an entirely different department, run under a different head. Mr. Munn worked there for a number of years, and was finally taken from that department to work for Mr. Milton.

803 Q Well, you had the lathes, and the milling machines, and the machine tools?

A In the engine department?

Q In the engine department?

A Yes. In the engine department only.

Q And, as I understand it, Munn did not have any machine tools to work with, for the magneto work alone?

A Not at the time he started.

Q And so when he wanted to do machine work he would come into your department?

A Yes.

Q And use your machinery?

A Yes.

Q That was the arrangement, was it?

A That was the understanding.

Q Who was it did most of that work in your department, that is, the actual work? Was it Munn? That is, the work on the magnetos?

A Oh, it was different men. It would depend on what kind of a job it was.

Q Well, when you had another man, you would let him use him, if he could do the work?

A If I did not have another man handy, it was up to me to get somebody to do that work.

Q And part of the work was done by Munn?

A Yes, sir.

Q Who was not directly in your department?

A Not directly under me.

Q You said that there was a separate pattern making department, where all the patterns were made, except possibly some metal patterns?

A Yes, sir.

Q Do I understand that you made metal patterns in your department, in some cases?

A In some cases, yes; where they were busy in the 804 pattern department there,—they had one man there that worked on metal patterns, and when he was too busy I helped him out.

Q You did not in your department make any metal patterns for any of this magneto work, as I understand?

A I could not say. I do not know.

Q Do you know of anyone else besides Milton and Munn, who were engaged in this experimental work, or the development or the manufacture of magnetos, before the magneto work was taken to Tiffin?

A Well, they had two or three men in the engineering department, working on it.

Q Who were they?

A They had one man by the name of Chiville. I think his name was Chiville; some such name.

Q Do you know of anyone else?

A Well, I do not know. There must have been a number of them working on it, because I would get an order through to do so and so, but I never knew who made the drawings; I never paid any attention to that.

Q I suppose you regarded this magneto work as a sort of a nuisance, anyway, in your department, did you not?

A In a way, yes.

Q I think that is all.

A It interfered with my regular work.

Mr. Bulkley: That is all.

Mr. Williams: Are you ready for Mr. Milton now?

Mr. Bulkley: Yes. Mr. Milton, will you take the witness stand now?

JOHN LEWIS MILTON, resumed the stand on behalf of the corporate defendants, and further testified as follows:

Cross-Examination Resumed by Mr. Williams.

Q This four-piece yoke that you referred to in your 805 testimony, how many of those were made?

A One,—or, two.

Q When was that?

A Right at the beginning.

Q Now, Mr. Milton, after this machine like Plaintiff's Exhibit No. 15, had first been tried out, and after it had been submitted to the Harvester Company, and tested and approved by the Harvester Company, what was next done with the machine, insofar as its commercial development is concerned?

A Why, the Harvester Company proceeded to make the castings, all of the iron castings, and electrodes, and everything—

Q And what did the Webster Company do—

A (continuing)—and everything, except the magneto proper, with the yoke, the magneto rotor, and shaft, and the springs, and the studs for supporting the springs. That was all we had to do.

Q Now, what did you have to do with the manufacture of those devices, yourself?

A I personally superintended it, and watched the tests on it, as it came through.

Q When did you do that?

A Daily.

Q How?

A Daily.

Q Well, when? During what time?

A It had been continuous from before that; all during the entire production I kept a very close watch of all that work.

Q Well, when was it you did that work?

A Every day.

Q In what month?

The Court: He wants to know what month and year.

A I will say every month.

Q In 1910, or 1909?

806 A Well, my work started there from 1905,—we started to make my own magnetos in 1906; and it ran on until 1909, when I left there.

Mr. Williams: Q I evidently have not made it clear that I am trying to ask you about the making of the magneto part of the equipment, as represented by this Plaintiff's Exhibit No. 15 (indicating). Now, during what months did you have to do with the manufacture of any part of that equipment?

A Well, this went into the production, this particular model, or substantially this particular model, as soon as the dies were finished.

Q Well, when was that?

A That, according to the letter I turned over yesterday, where I wrote to Mr. Webster that the dies were being finished, was sometime in May, when those dies were finished.

Mr. Bulkley: Q What year, Mr. Milton?

A 1909. And I—

Mr. Williams: Q That is, for the magneto part alone?

A For the magneto part. The rest of the parts did not require any very especial preparation.

Q Now, when did you begin, when was the manufacture of such devices made with those dies first taken up? When did the delivery of the first of those machines occur?

A I could not tell you without looking at my records. I have—

Q Well, have you any records here that would show?

A I think they will show. Shall I look at them?

Q Yes. I would like to learn about that.

A Well, in 1909, according to the report furnished me by the Webster Manufacturing Company, in January we shipped thirteen magnetos (referring to paper) in February 1, March 46, April 83, and in May 231; June, 400. So that shows you about when the new product started to go into the production, or the new magnetos. I dare say those 98 of April were of the earlier type, the larger bracket, of the same type; that is quite possible.

807 Q That is, there was a larger magneto than the one contained in this Exhibit 15, was there, but otherwise substantially identical with it?

A No; I would not say substantially. It was larger. There is a print of it here in evidence.

Q Well, it was like this Exhibit 15, except that it was larger?

A Of the same general type, but it was different in its electrical properties.

Q Now, let us see. You read from what? Some royalty reports to you?

A Yes, sir.

Q For the months of April to July, was it, 1909?

A January, through June, of 1909.

Q Now, what, again, were the numbers delivered or reported during those months?

A January, 13; February, 1; March, 46; April, 83; May, 231—232, I guess; June, 400.

Q And what for July?

A That is on another report, that I do not happen to have here.

Q Can I see these reports that you do have?

A Yes, sir.

(Papers handed to counsel.)

Q Now, how is it that you deduce from the figures shown in these royalty reports the fact that deliveries of this smaller type of magneto, as exemplified in Plaintiff's Exhibit No. 15, commence in May, 1909?

A Because there was a period there where the Harvester Company had practically started taking, and they were the

largest customers at that time, and it may be that those in May were Fairbanks engines, that were equipped with magnetos. Those were all the magnetos that went,—and the Fairbanks people would take lots of twenty-five to fifty at a time. I do not believe we ever shipped them more than 808 a hundred in any single month. So that tells me right away that that is where the Harvester work commenced to be felt.

Q Well, now, these magnetos of the size and kind exemplified in Plaintiff's Exhibit No. 15, were those sold and shipped to the Harvester Company always for use in connection with the unitary plug and bracket and mounting mechanism, as exemplified in Plaintiff's Exhibit No. 15?

A I do not recall them ever having been shipped for any other purpose, to the Harvester Company.

Q And those shipments of that magneto for use by the Harvester Company in connection with that unitary plug and bracket began, as you say, in May, 1909?

A Undoubtedly, from those reports; and from my memory it was about that time.

Q That is your own independent recollection of it?

A Yes, sir.

Q —also?

A Yes, sir.

Q Do these reports which you have here show the number of machines delivered to the Harvester Company during the months prior to January, 1909?

A It does not show them separately. It shows all the magnetos that were sent out. I can show you what went out, and give you the numbers, that went out in 1906, or 1907 and 1908; I am not sure about 1906, on that report; I think that is another report.

Q Now, this letter of May 10, 1909, to which your attention is called during your direct examination, contains these sentences:

'The inventory was a serious interruption, and since then we have been very busy attending to the Harvester Company's demands; they have gotten intensely impatient, telephoning several times a day, as well as telegraphing us from Milwaukee. This has all been supplemented by 809 many letters, so you can readily see why we have concentrated our attention to this live business'; and as I understand your direct testimony, the live business

referred to in that letter is the live business of supplying, shipping this magneto, as exemplified in Plaintiff's Exhibit No. 15, for use by the Harvester Company, in connection with the unitary plug and bracket, as they are exemplified in the same exhibit?

A That is correct.

Q That is correct?

A Yes.

Q Now, Mr. Milton, you have been present all during the trial of this case, have you not?

A With the exception of a very short period.

Q You have seen letters that were addressed by Mr. Waterman, and the letters written by him, have you not?

A I have heard them read.

Q Do you remember a letter from Waterman, that Waterman wrote, dated June 11, 1909, in which he said in substance that the Harvester Company had only then for the first time completed its tests, on the very first of these devices, like Plaintiff's Exhibit No. 15, which had been delivered to them at Milwaukee?

A I do not remember the exact date of that. I remember the letter having been read, where he stated the test had been completed.

Mr. Williams: Will you get that letter, the letter of about June 11, 1909?

Q When was it that the Harvester Company first did O. K. the first sample of this apparatus like Plaintiff's Exhibit No. 15?

A Officially, I do not know.

Q Look at this letter, marked Plaintiff's Exhibit No. 14, and state whether you have seen that before, at or about its date (showing letter to witness).

A I remember the substance of this letter, but I do not remember the letter itself, or the time when it came.

810 Q When did the substance of that letter first come to your attention?

A I cannot say.

Q Well, was it earlier than the date of the letter, which is June 11, 1909?

A I cannot say when it was.

Q When was it that the Harvester Company first approved, as a result of its tests, the equipment such as is exemplified in that Plaintiff's Exhibit No. 15?

A We regarded it as having been approved when Mr. Kane, Mr. Maurice Kane, and Mr. Cavanaugh and Mr. Stewart came there to the plant and looked it over. We regarded it as being approved at that time.

Q That is, they saw it for how long? An hour?

A Oh, hardly that long. They were there, I should judge, about an hour and a half, but they did not see it all the while; they were looking around the plant.

Q Stewart was the patent attorney?

A Yes, sir.

Q And Kane, Maurice Kane, was what?

A In charge of the experimental departments of the International Harvester Company.

Q Was he the man who passed on gas engines, or equipment for gas engines, as manufactured by the Harvester Company?

A It had to finally get his O. K., as I understood it; and Mr. Cavanaugh, who was there, was the active man. Mr. Cavanaugh had championed this product, this experimental work, and he was the active head; and his word went a long ways on—

Q What was his position with the Harvester Company?

A He was direct assistant to Mr. Maurice Kane.

Q Located here in Chicago?

A Located at the Harvester Building, in Chicago.

Q Then these people at Milwaukee, Waterman and
811 so on, they they had nothing to do with the approval or acceptance or decision?

A I do not say that. I say we regarded it as having been approved when it passed them, or we got their oral approval of it.

Q When was it that the Harvester Company first placed an order for equipment involving a magneto like this Plaintiff's Exhibit No. 15?

A That I do not know.

Q What?

A That I do not know.

Q Haven't you any records that will verify that?

A The only thing that I have got here is those reports that I showed you.

Q Royalty reports?

A Yes, sir.

Q Made from the Webster Company to you?

A Yes, sir.

Q Now, let me call your attention to this letter of June 11, 1909, written from Waterman, to the Experimental Department of the Harvester Company, in Chicago, and in which he says the following things,—in which he says this:

‘The improved Milton magneto recently received, attached permanently to the igniter plug has for sometime been in operation on a six-horse power engine. It is different in all of its parts from the magnetos we have regularly been receiving from the Webster Manufacturing Company, and these alterations submitted overcome reasonably well important objections raised by us in our letter to you of the 15th of March.’ ‘The new magneto complete weighs about eighteen pounds, as against about thirty-two pounds for the old one; the magnets are shorter; the rotor is half an inch less in diameter; the springs are fastened to posts set in the pole piece, and the pole in the center brass supporting the magneto proper is half an inch smaller in diameter. The

812 magneto as now presented seems to work well, and except for the fact apparatus of this nature is rather delicate when continuously exposed to dust and moisture, we see no reason why it should not prove reasonably satisfactory, electrically and mechanically,’ ‘because we already have seven different designs of igniter plugs for make and break engines, not including those of the new side shaft engine; if we are to purchase these new magnetos from the Webster Company, we should not have the igniter plug included as a part of their product.’

Now, does that refresh your recollection in any way as to whether the Harvester Company had even ordered any equipments of this kind, as exemplified in Plaintiff’s Exhibit No. 15, on June 11, 1909?

A I remember when that feature came up. Mr. Waterman, as he stated, when he was here on the stand, that he wanted to buy the magnetos, and for them to make the brackets so that they would not have to carry so many magnetos in stock, and tie up so much money and materials, that would not be used immediately. But that does not change my impression that they ordered a number of these for tests. Now, the tests, as I recall it, they wanted to run a number of different tests on different sizes of engines, and they wanted to run some endurance tests; I do not know whether those tests were made up by the Harvester Company, in Milwaukee, or

whether they put them out to some of their agents, to try them out in the field.

Q When was all that? When did that occur?

A I say I cannot state. I say it was my impression that came immediately,—that they wanted to get a number of these things right away.

Q That, you say, was before the completion of this test on the first one by Waterman, of Milwaukee?

A I do not know what the completion of that test meant. I do not know.

813 Q How do you mean you do not know?

A I do not know what his tests were. I do not—

Q What?

A I do not know what they were. I do not know—

Q Well, wasn't that the first test that was ever made by them on one of these equipments?

A I cannot say for that.

Q Well, when did they first make the test?

A I do not know.

Q On one of these equipments? What?

A I do not know. I know that—

Q Did they ever make any test of them, so far as you know?

A I know we set up a magneto on one of the brackets, to go on one of their engines, and just what—

Q You sent that up by Kane, I understand?

A Yes, that went up by Joe Kane.

Mr. Williams: Q Now, what they did up there you do not know?

A After that magneto was left there?

Q Yes.

A I do not know.

Q You never heard what the result of it being left there was?

A I could not say at this date.

Q You do not know whether they approved it or did not approve it?

A I know that the magneto was approved, and I know we started making them—

Q When was it approved?

A I do not know when it was approved.

Mr. Williams: Q Have you anything in any of your papers, or in your mind or in your recollection, that would lead you to say that that was approved before June 11, 1909?

814 A I would say that we may have gotten informal approval of that—

Q From whom?

A I could not say from whom, but probably from this man Andrews, who was up there; he may have reported to us—

Q Well, you are speculating.

A I know.

Q Are you not?

A I know we did get reports from him before the thing went through officially.

Q What kind of reports? Written?

A Oral reports.

Q To whom?

A To whoever happened to be calling up there.

Q You were not there?

A I was not there on this, but I had been there before.

Q You have answered the question. Now, this letter of Waterman's goes on to say, then, 'Because this new magneto certainly is an improvement over the older one, we recommend that our present order of these older magnetos be completed and delivered to us at a uniform rate per week, before the 15th of August.' Now, do you know what he referred to there as the older magnetos? Can you describe those?

A Let me read that, will you? I was thinking of another phase of this.

(Paper shown witness.)

Q Have you read it

A No.

Q How?

A I have not quite finished. I remember his recommendation coming through.

Q Whose?

A This.

815 Q Waterman's?

A Yes; and I remember that—

Q In this letter?

A And I remember we made an effort to have that advanced.

Q What advanced?

A Their requirements advanced, because we did not want

to furnish any of the old troublesome magnetos, and I do not believe we did.

Q Now let me go on with what I was reading from this Waterman letter:

'We recommend that our present order of these older magnetos be completed and delivered to us at a uniform rate per week before the 15th of August; that one dozen of these new type magnetos be delivered to us immediately.'

Now, does that refresh your recollection as to when the order was received for the dozen that you spoke of as being made to go out into the field for tests around in various places?

A I do not know when that order came in.

Q Was it before the 11th of June, 1909?

A I could not say whether it was before or afterward, but I think it was before that.

Q You do?

A I think so.

Q When were these dozen delivered?

A I do not know.

Q Before or after the 11th of June?

A I do not know.

Q Was that a written order?

A I do not know. We did a great many things informally.

Q Never mind. You do not answer what I asked you about.

A Well, I want to explain.

Q I am not asking you to explain. I am asking you 816 the fact. Now, after saying that, 'one dozen of these be delivered to us immediately, regular delivery of these new ones, inclosing only magnetos with coils, the rotor trip finger, and springs for the trip finger, to begin on the 15th of August, at the rate of about fifty per week.'

Now, did the delivery of these equipments or magnetos exemplified in Plaintiff's Exhibit No. 15 begin before the 15th of August?

A I am very sure they did.

Q In what quantities?

A I do not know. I know we were delivering them to them regularly before I went to Europe.

Q And when did you go to Europe?

A I went to Europe in August; and I know that when

that came in I wanted to stop that old magneto that was giving trouble.

Q Never mind what you wanted to do.

A Well, I wanted to—

Q You say they were shipped in quantities, commercially, before you went to Europe?

A Yes, that is my impression of it.

Q On written orders, or oral orders?

A I could not say.

Q Have you got any written record of any kind, or any written memorandum made contemporaneously, that would verify your recollection, or confirm it upon that point?

A None that I am aware of.

Q This letter of Mr. Waterman's says, 'If this program can be followed we will begin to make use of these new magnetos on the first of September.' Did the Harvester Company begin to make use of them before the first of September?

A I am sure they did.

Q And you are sure that those shipments began in May—before May, 1909?

817 A I know that I have a letter here where I stated about the Harvester requirements.

Q Let us see that.

A You have it there.

Q Which letter is that?

A I think it is that you have in your hand now. It is Defendants' Exhibit No. 14.

Q This May 10th letter (indicating)?

A Yes; and I think that those were the first sample magnetos, that they wanted; that is my remembrance of it.

Q Now, what is there in that letter upon which you base that statement?

A 'The inventory was a serious interruption, and since then we have been very busy attending to the Harvester demands. They have gotten intensely impatient, telephoned several times a day, as well as telegraphing us from Milwaukee. This has all been supplemented by many letters, so you can readily see why we have concentrated our attention on this live business.'

Q Now, it is because you find the words 'live business' there, that you base your statement that deliveries of these machines, like Plaintiff's Exhibit No. 15, had commenced before the first of May, is it?

A I base my statement on the fact that I knew that I was very glad to get away from having to furnish the old type of magneto, and as soon as this,—the chance of sending the new one, came, I bent every effort to get this business lined up, which I term here as 'live business.' It may have been only the samples they were impatient for. I cannot possibly imagine the Harvester Company telephoning or telegraphing us for the old type of magnetos, which had been such a trouble maker.

Q Now, this letter of Waterman's dated June 11, 1909, says: 'We recommend that our present order of'—it reads here—'present order of these older magnetos' or 'for 818 these older magnetos, be completed and delivered to us at a uniform rate per week before the 15th of August.' Now, what is the fact? Did you continue to make deliveries of those older type magnetos up until the 15th of August, 1909?

A To give you the absolute, definite fact, is beyond me at this time, but it is my impression that we tried to substitute the new for the old.

Q Never mind about that. I am asking you whether you did make the deliveries of the older ones.

A I cannot tell you.

Q You do not know?

A No, sir. I think we did not.

Q You still insist, then, that the live business to which you referred in this letter of May 10, 1909, when you wrote Mr. Webster, was business in these newer equipments, such as Plaintiff's Exhibit No. 15, rather than the older type, to which Mr. Waterman refers in his letter of June 11, 1909, do you?

A I believe it is.

Q Well your recollection is based upon what, or your belief is based upon what? Upon the language of the letter, as I understood you?

A The language of the letter, and my definite remembrance of the trouble that the old ones were giving, and the fact that it appeared immediately preceding there that we shipped so very very few to anybody, which of course would include the Harvester Company.

Q Now, let us see. In these royalty reports to you you said that in April, 1909, how many magnetos, all told, were sold or shipped by the Webster Company?

(Papers handed to witness.)

A Eighty-three.

Q Now, those in April were of which type? The older type or the type like, for use in, Plaintiff's Exhibit No. 15?

A They may have been the Fairbanks' type. I do not know.

819 Q You mean that they may not have gone to the Harvester Company, at all?

A They may not have gone to the Harvester Company, at all, because—

Q Now, how about May? How many?

A In May there were 230.

Q To whom were they shipped?

A They are billed at \$8; and that was the price of the Harvester Company machine.

Q For which? The older one, or the one like Plaintiff's Exhibit No. 15?

A I think it was,—I think that each one of them carried the same price; so I would not be able to identify it by that.

Q Now, how many are there there?

A 230.

Q Those 230, as I understand you now, were of the type exemplified by Plaintiff's Exhibit No. 15, were they?

A I will not say so. I do not know.

Q Well, what were they?

A I do not know, because I—

Q Well, were they the older ones, or were they the new ones like Plaintiff's Exhibit No. 15?

A Again, these may have been Fairbanks' machines, because here in April—

Q They may have been Fairbanks', you say?

A Yes.

Q And may not have been Harvester, at all?

A There may have been some Harvester. There may have been a mixing. I cannot tell, because I see here in April—

Q You have answered all my questions. Now, answer this one: Have you got anything else that would enable you to tell?

A Not that I am aware of.

Q Now, look at this letter of May 26th, 1909, from 820 H. A. Waterman, by Bradley, to Cavanaugh, of the Harvester Company; that is Plaintiff's Exhibit No. 9. Did you ever see that, at about its date?

(Exhibit handed to witness.)

A I do not remember of seeing this, or any other letter from Mr. Bradley. I do not recognize the signature.

Q Did the substance of this letter of May 26th come to your attention, this letter which reads:

"Replying to your letter of May 17th, as outlined in the New Works Committee Report No. 176, Mr. Waterman has arranged to run the Milton magneto, which Mr. Kane left at this works, for a period of two or three weeks; at completion of this test we will make report covering the magnetos, to date."

Did the substance of that come to your attention on or about May 26, 1909?

A It is my remembrance that the formal report was asked for from the Milwaukee works, or the Harvester Company down here.

Q Well, I am asking you whether the substance of this letter came to your attention on or about May 26th, 1909?

A Well, that letter itself I do not recall.

Q You say that it was before May 26th, 1909, that you began shipping commercially these magnetos, for use in this Plaintiff's Exhibit No. 15, do you?

A I do not say commercially. I say—

Q Well, in quantities?

A In quantities,—I do not know; but this letter tells me that we were shipping something to them, and I am pretty sure it was that type, for the reasons explained.

Q Because the letter says, 'Live business'?

A Absolutely.

Q 'Live business' could not have meant the several hundred—

A Of the square type.

821 Q Of the older type?

A Not when we were so anxious to get away from it.

Q What other 'live business' did the Company have in magnetos at that time, aside from the Harvester and the Fairbanks' equipments?

A The Harvester, and Fairbanks, and occasionally we were selling magnetos to people to put on machines that were already out. Those were the type that were driven with a sprocket and chain.

Q That is, an individual one here and there, to individual purchasers?

A Throughout the Northwest. I did have a very long re-

port on that, and I think I still have that, but I haven't it here with me.

Q Now, the only business you had then were those sporadic sales to individuals, some to Fairbanks, and some to the Harvester, which, from your royalty reports you cannot distinguish from the other, and that is the whole of the live business that the Company had in magnetos, at that time?

A I don't remember any other.

Q Now, what type of machine paid the royalties that you refer to there in your royalty reports, in February, 1909? What kind of machine was that? The older one, or the kind represented by Plaintiff's Exhibit No. 15?

A February, one shipped.

Q One machine sold?

A That was billed at fourteen dollars.

Q Now, what kind was that, or was it the Plaintiff's Exhibit No. 15 type?

A It could not have been that.

Q It could not have been? Well, you base that upon your recollection, or upon what you find in the records?

A Both.

Q Now, in March, how many were shipped, altogether?

822 A There were 46 shipped.

Q 46 magnetos shipped during that month. Now, what type were they? Were they Plaintiff's Exhibit No. 15 type, or the older type, which preceded that?

A These were billed at \$14.50. It was an older type.

Q Now, April, how many were shipped altogether during that month?

A 83.

Q What were they? Of the older type, or a new type like Plaintiff's Exhibit No. 15?

A I do not believe that there were any of them of the new type, or could have been.

Q How?

A I do not believe any of them could have been of the new type?

Q In April?

A No, sir.

Q And how many were there in April, altogether?

A Eighty-three.

Q Now, how many in May, altogether?

A 231—232.

Q And those you say are of the new type, like this Plaintiff's Exhibit No. 15?

A No, I do not say that. You asked me that question.

Q Well, what are they?

A You asked me that question before, and I told you I could not tell what they were.

Q Now, go to June; how many then?

A In June there were 400.

Q Even?

A No. There is another figure here. 402.

Q Now, which were they? The older type, or the new 823 type like Plaintiff's Exhibit No. 15?

A Two of them were billed at \$10.50 a piece. That could not have been possibly,—at least I do not think it could have been the new type. And of the old type, I have the figure of \$8, which appeared before and after the time that this was developed; and I cannot tell you from this record, or I cannot tell you from my memory.

Q Then you do not know whether it was the old type or the new?

A I cannot tell you.

Q How about July?

A I haven't it here.

Q How about August?

A I haven't anything after June.

Q That covers everything you have covering the time up until you left, in August, doesn't it?

A No, I have other records, but I do not happen to have them in my hands.

Q Where are they?

A I think I have them here in Chicago.

Q Here in your case?

A I do not believe they are here.

Q Will you look and see?

A In the case?

Q Yes.

(The witness left the stand and produced some papers.)

Q What papers did you find there, Mr. Milton?

A I have made a thorough search, and I do not find the other papers. The papers that I took out were some other papers, that I thought might have some bearing on the case here.

Q What are they?

A May I see them?

A Why, they are simply letters addressed to— Part of the correspondence I had with T. K. Webster, Jr., immediately after leaving for Europe.

824 (The witness handed the papers to counsel.)

Q This first letter that you hand me here is a letter reading, on the letterhead of the Webster Electric Company, Tiffin, Ohio. (Reading:)

'Tiffin, Ohio, August 31, 1909.' Addressed to J. L. Milton; signed 'Webster Electric Company by Towner.' Who was Towner, by the way?

A Towner K. Webster, Jr.

Q Connected with the Webster Electric Company?

A Yes, sir.

Q In which he says, among other things:

'Things are going very nicely, and we are beginning to turn out a good many different parts. I hope to be able to ship some magnetos the last of this week.'

Does it not?

A I have not read it very recently, but that is my remembrance of it.

Q That is a letter dated August 31, 1909?

A Yes, sir.

Q These other papers that you pulled out here have to do with in 1911, do they not (indicating)?

A Yes. I did not read these over before I pulled them out, but I did not want to forget them; that is why I picked them out.

Q So that you do not know what the shipments were, nor what kind of machines were shipped during July or August, 1909?

A No, but I believe, I have the records in Chicago here.

Q Have you got more papers somewhere else here?

A Yes, but not—

Q Where are they?

A They are at the hotel.

Q Have you got a lot of them?

A Quite a lot of them.

Q What?

A Quite a lot of them.

825 Q How many? A hundred or two hundred?

A More than that.

Q Now, Mr. Milton, how does it happen that after this machine was sent to the Harvester Company, to be tested, this machine as exemplified in Plaintiff's Exhibit No. 15, that you

do not know anything about how long they ran that test, anything about when the test was finished, or when they approved the machine, or when they ordered machines,—that you yourself never went to Milwaukee in connection with that test, do not know what they did up there, do not know anything about it? Now, how does that happen?

A Well, I would not say I did not know anything about it. I was getting reports, and keeping in touch with the situation, with the Harvester—

Q I think you said a little while ago you did not get reports?

A Well, I was getting oral reports.

Q From whom?

A Why, from Kane. He went up there, and—

Q Joe Kane?

A Yes. And I was getting reports through Mr. Webster, and we were in constant touch with the Harvester Company. What those reports were, I do not know, but my—

Q Then let me ask you again: The first machine was sent to Milwaukee to be tested, was it not?

A Yes.

Q Now, when was it sent there?

A It was sent there very shortly after—

Q No. What is the date, the month?

A Well, now, I am fixing it. Very shortly, after when Mr. Kane, Sr., Mr. Cavanaugh, and Mr. Stewart were at the Webster Company, which I think was sometime in, early, in May.

Q So that it was early in May that that machine was sent there for test, was it?

A That is my remembrance of it.

Q Now, after that you did not see the machine there?
826 You did not talk with any of the Harvester people about it yourself? You did not see any written reports from anyone about it, did you?

A I do not recall those written reports. I may have seen them, and I may have been over to the Harvester Company and talked to Mr. Cavanaugh.

Q Now, answer the question?

Mr. Bulkley: Let him make his answer.

Mr. Williams: He has answered it.

Mr. Bulkley: No, he has not.

Mr. Williams: He said he did not know.

Q And you do not know when they finished their tests there in Milwaukee, do you?

A They made tests, and they were continuing to test the thing for a long period. I do not know what you would call a finished test.

Q Weren't you concerned or interested?

A Absolutely, all the while, and am yet.

Q Do you not know when they finally approved the machine, to be used by the Harvester Company, do you?

A I took it for granted that the thing was approved, when—

Q I am not asking you what you took for granted. I am asking you whether you know when they finally approved it.

A Mr. Cavanaugh and Mr. Kane and Mr. Stewart were there, and gave an approval at that time; that was an oral approval; and that is when I date back to the first approval we got of them; and then there were different phases of that.

Q That approval was then? Early in May, you say?

A That is my remembrance of it.

Q That was the approval by Maurice Kane and Stewart and Cavanaugh?

A Exactly.

Q Did they place any order for anything, any machines?

A No order.

827 Q Who did place the order finally?

A I do not know.

Q Weren't you concerned as to whether you got an order?

A Intensely so, yes, sir.

Q Have you got anything to show anything about the receipt of that order?

A Nothing.

Q Or do you know anything about when it came?

A Nothing.

Q Or how or where?

A I have a very strong remembrance that there was very considerable pressure put on me to get out machines, as soon as this thing was disclosed.

Q By whom?

A By the Harvester people, generally. I think—

Q That was early in May they put that pressure on you, was it?

A I would say immediately following that. I won't say it was early in May, but I think, if my other assumption was right, this is right, that it was early in May.

Q Now, you say that Maurice Kane and Cavanaugh and Stewart saw the first of these machines like Plaintiff's Exhibit No. 15, run here in Chicago early in May, don't you?

A I say according to my best knowledge—

Q Yes.

A —it was about that time.

Q Yes. Early in May. Now, that is the first one of that type that any of the Harvester people had ever seen, is it not?

A That is the first time that any of us saw it, was right about that immediate time.

Q Now, how early in May was it that they saw that?

A I think it was so early in May that it may have been the first day; it may have been even the latter part of 828 April, because we worked very continuously on it; I do not think it took us more than two days or two weeks to get the thing out.

Q From what? After that date?

A After the date as we have set up here as when we started to make our drawings.

Q When was that?

A April 14th. April 14th, yes.

Q That is the date, is it, when the drawings were started?

A That is the date we have set up here.

Q Well, is it the date? I do not care about what you have set up here.

A I know,—it is the date, as near as we can establish it.

Q Who are "we"?

A All of us.

Q Who?

A You, and myself.

Q You are basing your testimony upon what I am establishing, are you?

A What we are all establishing, by the letters. I will review them, if you wish me to.

Q All right.

A The first letter of Mr. Webster, of April 16, 1909, and the time,—that letter was written immediately following my request to him to get an engine for this purpose. That is my anchor on this date.

Q That is what you anchor your testimony to?

A Yes.

Q And by the tenth of May, notwithstanding the fact that it was early in May that the first one, sample of one of these machines was ever shown to any of the Harvester people at all, by the tenth of May you wrote Mr. Webster that you had been so overwhelmed getting out machines, of this new "live business" type, that you could not attend to something else?

That is your testimony now, is it not?

829 A My testimony is that the interruption of the inventory, and the—

Q No, but the live business, the first—

A (Continuing)—demands of the Harvester Company,—that may have been only five machines; they were new, and special, and we did not have complete tools for it, and it was some job to get out even one of them.

Q And it was that "live business," that is, the getting out of these five, that the Harvester Company was telephoning and telegraphing and writing letters about, was it?

A That is my knowledge of it today.

Q Have you got a single one of those letters or telegrams?

A Not one.

Q Have you tried to locate one of them?

A I have not gone out and looked for those, but I have been through my files at that date, and did not find one.

Q Have you talked with any of the representatives of the Harvester Company, in preparing to give your testimony here, Mr. Lord, or Mr. Kimbark, or any of the people connected with the Harvester Company?

A The only person connected with the Harvester Company that I have talked to was Mr. Merwin, with reference to this subject.

Q Have you made any effort at all to get a single one of the letters or telegrams referred to in your letter of May 10, which you now say were written in the effort to procure the shipment of these new devices, like Plaintiff's Exhibit No. 15?

A Those were company records, and they are evidently in the Webster files, and therefore I made no effort to try and find them; I do not suppose it would have done me any good if I had.

Q Well, why not?

830 A Because, the evidence and the knowledge of this thing, that has been used, has been used as the Webster Company's representatives wanted to use it.

Q And that is why you think these things would be concealed, I suppose?

A I did not say that.

Q Well, at least they would not be available?

A Feeling that way about it, I did not ask for them.

Q Let me call your attention to this letter of May 6, 1909, from Mr. Edward H. Kimbark, of the Harvester Company, to Mr. A. E. Mayer, Division Manager, dated May 6, 1909, in which he says:

'Referring to letter of the Webster Manufacturing Company, of April 29, Mr. Kane looked over this new method of attachment on the fourth, and it looks to be an improvement over that previously used.'

Would that date, May 4, 1909, be consistent with your recollection as to the date at which Stewart and Kane and Cavanaugh came and saw the machines?

A Quite consistent. The early part of May, 1909.

Q And by the 10th of May after that you were just seething with these orders for "live business," as you now testify?

A The production of one may have made us seeth.

Q Now, in this letter of May 10th, your letter of May 10th to Mr. Webster, you say that you have ordered dies for the smaller type of low tension magneto?

A May?

Q So that any business that you may have had before the 10th of May was not on manufactured magnetos, was it? That was hand made samples?

A No, we had a set of dies of a machine larger than this, which is shown in the blue prints that I had here in connection with the link motion machines, and then we made some by hand, feeling out the size, that is, they were being
831 worked out by hand, to find out whether our calculations were right, before we would go to the expense of making the large dies to produce those; and that having been determined, the dies were ordered as stated there.

Q Now, in this letter of yours dated May 10, 1909, you say that the smaller type magneto for jump spark work has been necessarily sidetracked, for the various interruptions. Now, what were those interruptions?

A Well, they are in the letter; I referred to the inventory.

Q Anything else? Any other interruption?

A That is at least one precedent there in the letter. I would have to look that over again, and see if there is any other.

Q The letter reads, 'that smaller type magneto.' That was the high tension magneto, of course, was it not?

A Yes— Which is that?

Q The smaller type magneto, for jump sparkwork.

A Yes.

Q 'Has been necessarily sidetracked, for the various interruptions'?

A Yes.

Q That was the high tension machine?

A That was the high tension— No, it was a jump spark machine, as distinguished from a high tension machine, as we understand it.

Q As distinguished from high tension?

A Yes.

Q I thought the jump spark is high tension.

A A jump spark machine, as we made them, were low tension machines, in which the low tension current was delivered to a transforming coil. That distinguishes it from a machine of a direct high tension.

Q At any rate, this small magneto for jump spark work, that was something for the Cadillac and automobile trade, was it not?

A It may not be, jump spark work; I would not be specific on that.

832 Q Now, that you say was necessarily sidetracked for the various interruptions. Then the letter says, 'Just prior to taking our inventory we had to concentrate our attention on getting the equipment ready for Mr. Chiville. Now, the inventory was taken when? May 1st, was it not?

A According to these letters, yes, sir.

Q And how long did that take?

A I do not know.

Q Well, a day or two or three or four?

A I would say approximately from two to five days.

Q That was following the first of May?

A I rather think it was two or three days.

Q Then the letter goes on, 'had to concentrate our attention on getting the equipment ready for Mr. Chiville.' That was some automobile high tension equipment?

A It was.

Q And that was not the high tension equipment of the smaller size, was it, that you got ready for shipment?

A I could not tell you that at this particular time.

Q Then the letter says, 'The inventory was a serious interruption, and since then we have been very busy attending to the Harvester Company's demands.' That was one of the interruptions, was it?

A I would hardly regard that as an interruption.

Q Well, doesn't your letter call it that? That is the point of my question.

A I see that is the point of your question.

Q Well, haven't you detailed it there as one of the interruptions, interruptions to the thing that you were interested in,—getting out this small high tension machine?

A It is possible to put that construction on the letter, if you look at it in that way.

833 Q Isn't it what you—I do not care about the possible construction. Isn't it what you referred to as one of the interruptions in that very work, when you wrote the letter?

A I say the inventory was the interruption, the main interruption, but not the interruption of the regular work—

Mr Bulkley: Now, your Honor, I submit that the witness should be permitted by counsel to answer.

A I would like to have a chance—

The Court: Yes. He should have a chance to answer the question.

Mr. Williams: Well, take your time, and answer it.

A If you regard the ignition, the high tension ignition program—

Mr. Williams: Now, won't you read him the question?

A I have got it.

Mr. Williams: Well, I would like to hear it, myself.

(Pending question read.)

Q Did you get the question?

A Yes.

Q That is, whether this, where you say 'the inventory was a serious interruption, and since then we have been very busy, attending to the Harvester Company's demands,' isn't that one of the things which you detailed in that letter as an interruption, with respect to the getting out of this small high tension machine, and didn't you so mean it,—as an interruption, when you wrote that letter?

A Is the question finished?

Q Yes.

A Mr. Webster and I always differed—

Q Now, I will ask you to answer the question.

A I am answering your question, but I have got to answer it in my way.

Q No, you have not.

834 A I cannot say yes or no to it. I will not say yes or no; I cannot do it.

The Court: Go on.

Mr. Williams: All right. Then explain it.

A Mr. Webster and I always differed on the program of running that, of which machine we should give preference to, the high tension or the low tension. Mr. Webster had written and asked me—

Mr. Williams: Now, I submit,—I will give you time, but I submit, your Honor, that the question is whether in writing this letter he did not detail this Harvester work as one of the interruptions referred to in the same letter. Now, I am willing he should answer that question.

A Your Honor, I would like to answer it.

The Court: I think he should be allowed to answer it.

A And then if it is not right, you can strike it out, and I will make another effort at it.

The Court: Go on, and answer it in your own way.

A Mr. Webster's idea,—when Mr. Webster wrote me he wrote me on this high tension work, and answering him from the state of mind or to communicate to his mind the question, as presented to him, I assumed that the program we were talking on was the high tension work; so, starting with the high tension work there was one interruption, as that, being the program, in itself,—the inventory; then next was the low tension work, that I put ahead of that myself; so these were interruptions, as viewed from Mr. Webster's standpoint.

Mr. Williams: Now, let us see. This letter of yours of May 10, 1909, was written in answer, was it not, to two letters of May 8, 1909, from Mr. Webster to you (indicating).

A Two letters of May 8th.

Q And in your letter you were attempting to, as you
835 say, adopt Mr. Webster's viewpoint, and explain the reasons for the delay in the production of the small high tension machine, were you not?

A Yes.

Q Now, the letter, one of the letters, Defendants' Exhibit No. 13, from Mr. Webster to you, dated May 8, 1909, and which you were answering there in your letter of May 10th,

1909, says, "Regarding the magneto, we went out yesterday and gave the car another trial." That, as I understand, was high tension magneto?

A The Maxwell-Briscoe car.

Q The letter goes on: 'The car was not equipped with a speedometer, and that took some time'; and, a little later, 'The magneto behaves handsomely, and up to the present time everybody is well pleased with it.' All of that letter refers, does it no,— This is Defendants' Exhibit No. 13—to the high tension magneto?

(Letter handed to witness)

A I judge this is an exact copy of the original. This is dealing entirely with the high tension proposition.

Q Now, Mr. Webster's other letter of May 8, 1909, to you, which you are answering also in your letter of May 10 as you say, this one being Defendant's Exhibit 12, reads:

'I wish you would advise me just how you are getting on with the smaller type of magneto, and also if you have done anything further in developing the coil.'

What do you say now as to whether that inquiry referred to a high tension or low tension magneto?

A Let me see it, please.

Mr. Williams: Have you got your original exhibit, Defendant's Exhibit 12? This is my copy of it.

Mr. Sturtevant: They were all turned over to Mr. Frank this morning and they are on the corner of the table.

836 The Witness: This letter was written by Mr. Webster when he was there at New York working with the Maxwell-Briscoe people in connection with the jump spark magneto, and I believe both these letters refer entirely to the jump spark magneto?

Mr Williams: Q Well, the high tension?

A The smaller type; they made smaller types of magneto.

Q In testifying yesterday you said that this letter of May 8 1909 Defendant's Exhibit No. 12—(Interruption).

Q This letter of April 16, 1909, from T. K. Webster to you, Defendant's Exhibit 4, that is the one to which you anchor your recollection, as you have said?

A That is the one that I anchor my recollection to, of the date—

Q Well, you have answered the question. Now, this letter of April 16, 1909, says

'Please write me at New York, 88 Reade Street, how the small size magneto comes on, if you get a good spark.'

Now, what was that, low tension or high tension?

A As just stated, we were developing a—

Q Well, which was it?

A Well, I have to answer it—

Q You can answer yes or no.

A No, I could not.

Q Then you needn't answer it.

The Court: Let him answer yes or no to your question so he will—

Mr. Williams: Q Was it low tension referred to in that letter?

A My interpretation of that letter—

Q You can answer that yes or no, can't you?

A It is my interpretation of that letter that it is low tension because it refers to the low tension above. I would suggest that if you want it answered positively to get Mr. Webster; it is his letter. It is my interpretation of that 837 letter that it is low tension, because it is so stated; it is upon that subject.

Q And it is because you so interpret it that you anchor your recollection to it?

A No, indeed. It is the fact that he got that engine from Mr. Tyson, the one I asked for; the opening statement of the letter—

Q The opening statement of the letter, the inquiry as to how the small sized magneto comes on, that you do not use in anchoring your testimony?

A No, not at all.

Q This letter of April 16, 1909, from Mr. Webster to you is dated Union League Club, Chicago, is it not?

A Yes.

Q And received by you in Chicago out at the factory?

A In due course, yes; the next day, I fancy.

Q Did you make any written answer to this letter of Mr. Webster's dated April 16, 1909.

A I have no copy of it and I don't remember of having done it.

Q Have you looked through your papers to see if you can find any answer or any copy of any answer?

A I didn't look for that particular paper but I went through looking for everything that had a bearing on this subject.

Q Did you find any letter which was an answer to that letter?

A As just stated—

Q Or a copy of it?

A As just stated I did not.

Q So far as you know, you never made any answer to that until that inquiry of April 16 by Webster was supplemented by his letter inquiries of May 8, 1909, and which letters were then answered by you under date of May 10, 1909; that is the sequence of the interference as you now say, is it?

A No; there is another letter in between there.

Q Is that in evidence here?

A Yes. At least one more letter from Mr. Webster written to me from Hotel Seville regarding the Fairbanks proposition, on on Hotel Seville stationery, a long-hand letter. I think it is the exhibit following this, number 5.

Q Do you say, as I understand it, that you devoted yourself to the manufacture, the commercial manufacture and production, of these machines exemplified by Plaintiff's Exhibit No. 15, before you went to Europe in August, 1909? Did you?

A Do you say I confined myself to that?

The Court: 'Devoted' yourself.

Mr. Williams: Q Devoted yourself to the commercial manufacture of those machines—

A Yes.

Q Did you spend time upon that work?

A Yes, I did.

Q When was it you sailed for Europe?

A About the third week in August of 1909 on this trip.

Q And before sailing you had some dies made down East somewhere?

A Yes.

Q Where did you have those made?

A At the V. & O. Press Company, Brooklyn.

Q Did you have anything to do with the ordering or making of those dies?

A I had something to do with the making of them. I supplied—

Q How did you handle that?

A I supplied instructions on it.

Q How?

A I don't remember the details of it. I know that—

Q Orally or by letter?

A I did it orally—I mean, did it by letter or by personal transmission to Mr. Teagle or Mr. Alexander, I don't recall which. I haven't looked up anything to refresh my memory on that. I know I had an active hand in it.

Q Did you go there to the V & O. place of business before sailing?

A I did.

Q How long were you there?

A About an hour and a half or two hours.

Q Were the dies ready?

A It is my remembrance that they were, and they had samples.

839 Q And how long before sailing for Europe was it that you stopped work here in Chicago for the Webster Manufacturing Co.

A I worked for the Webster Company up to about the middle of August.

Q You spoke of a Cadillac car that you got; as I recall it, you said in December or January, 1909.

A Yes.

Q Whose car was that?

A I paid for it. It was mine.

Q Was it a nice car?

A Well, it was a Cadillac.

The Court: He says it was one of the famous models, a four.

The Witness: Oh, yes, it was a four. It was one of the first, one of the very first cars; I think it was No. 257 of this first Cadillac famous—or famous Cadillac thirty. Any they were selling them at a very low price and supposed to be a very high grade car.

Q Had you owned an automobile before that?

A I had not.

Q This was the first automobile you ever had?

A Yes.

Q And it was a dandy, wasn't it?

A Well, that term is capable of a number of interpretations.

Q Well, that is what you thought about it—didn't you, when you got it? Don't you remember taking me to ride in that car?

A I recall the fact that you looked it over, and I think we rode together in it.

Q Don't you remember also that you were taking lots of other people for rides just after you got that car?

A Well, I know that the car was in regular use, and I didn't ride alone.

Q Don't you remember coming down to the Union League Club with that car frequently to attend conferences that Mr. Webster would have with—oh, various people? Sometimes I attended them and sometimes, I think, Mr. Becker attended, and—oh, every week almost that some one was being driven around in that car and then there would be a big luncheon down at the Union League Club, and then we would talk over this magneto and all that don't you remember it?

A I don't remember it quite that way.

Q How do you remember it?

A I remember occasionally there were luncheons at the Union League Club?

Q In a private dining room?

A There were two or three of them in a private dining room.

Q And the subject of those conferences at those luncheons was this high tension machine that you were developing, wasn't it?

A Not always limited to that. I fancy it always came up, as it was my remembrance that that was part of almost every conversation that I had with Mr. Webster.

Q You took people out in the Cadillac car to show them that high tension magneto, didn't you?

A That was the object of a great many of them; that was the object of the car, to show that.

Q You got the car in January; when did you get the magneto on it?

A The magneto went on it the middle of December, 1908.

Q That was at the factory or here?

A At the factory. It was driven around there at the factory around Detroit, a long while, and was left for them to demonstrate with, and they finally shipped it, the early part of January.

Q Who attended some of those luncheons when this high tension magneto was being talked of by Mr. Webster and you and everybody?

A Why, it seems to me that Mr. Webster would have Mr. Waterbury; Mr. Perkins quite regularly, when we could get Mr. Perkins; and Mr. Webster, and you, and I remember at times, as I recall it,—

Q Sometimes Towner Webster?

A Yes, sir, sometimes Towner Webster.

Q Sometimes Henry Ketchel Webster, his other son?

A Yes.

Q And then somebody who was to be interested in this machine also usually, wasn't there?

841 A Well, I wouldn't say 'usually.' 'Occasionally,' or 'at times,' there were. It is very difficult to recall all that.

Q There was lots of that sort of thing going on, wasn't there?

A It happened a number of times.

Q You have been here throughout the trial of this case, I believe you said, and heard the testimony?

A With the exception of a very little, a very short period.

Q Now, let me call your attention to the preliminary statement of John L. Milton in this interference No. 39013 between Milton and Kane in the form of an affidavit, sworn to by you: let me ask you whether you executed this affidavit: (Reading)

'State of Michigan }
'County of Wayne } ss.

'John L. Milton, of Detroit in the County of Wayne and State of Michigan, being duly sworn deposes and says:

'I am a party to the interference declared by the Commissioner of Patents on August 24, 1915, between letters patent No. 1096048 issued to me on May 12, 1914, and an application for letters patent said to have been filed by Edmund J. Kane; to the best of my knowledge and belief that I conceived the invention set forth in the declaration of interference on or about the 15th day of August, 1908; that on or about the 15th day of August, 1908, I first made drawings of the invention; that on or about the 15th day of August 1908, I first explained the invention to others; that I first reduced the said invention to practice on or about the 24th day of September, 1908; that the said invention has gone into wide and extensive commercial use, and that I filed an application for British letters patent covering the same invention upon the 28th day of October, 1909, which said application was given No. 24838 of 1909.'

Mr Bulkley: Read the question.

842 (Question read as follows: 'Now, let me call your attention to the preliminary statement of John L. Milton in this interference No. 39013 between Milton and Kane in the form of an affidavit, sworn to by you'—

The Court: He may answer.

Mr. Williams: He hasn't read the whole of the question.

The Court: He may answer.

Mr. Williams: Q The question is now whether you executed an affidavit in the form in which I have read it.

A I did.

Q How?

A I did.

Q That was in November 1915, was it not?

A 1915.

Q Now, Mr. Milton, when was it that your recollection of these dates,—for example, the date of the first reduction to practice of this invention,—became so changed from the date as stated in this preliminary statement where you said that it was first reduced to practice on the 24th of September 1908?

A Well, this preliminary statement was made—

Q No. The question is when you changed your recollection of that matter, of that date.

(Objection—discussion—no ruling.)

Q Let me ask you now again: When did you reduce to practice—

A As I recall it—What is that question now? I can answer you, but I have to answer one question at a time.

Q You have only one question to answer at a time. Before answering the previous one, let me ask you this: When do you say now that you first reduced to practice the subject-matter of the invention involved in the interference?

A I say now, after having gone over the records and refreshed my memory, and gotten the models before us, and giving it further considerable thought and study, that it was in the middle of April, 1909. Now, your other question—

843 Q Now, the other question is in effect as to when it was that your recollection of the date of reduction to practice became changed to that extent,—that is, from the 24th day of September, 1908, to the middle of April 1909.

Mr. Peaks: That is the question that I object to.

The Court: He may answer.

The Witness: Why, when that preliminary statement was heard—

Mr. Williams: Q Now, Mr. Milton, the question is—

The Court: When was it?

The Witness: When I took it up with—Well, now, let me see. It is hard to say at this time when I found that that statement was fixing the date too early; it seems to me it was when this case was brought up actively that I became aware of that fact.

Mr. Williams: Q You mean became actively aware during the trial of this case?

A No, when you were taking it up with me for my early date on that, in Detroit, in 1916.

Q Let me see: I talked with you in Detroit on October 6, 1915, didn't I?

A 1916 wasn't it?

A That date was fixed between you and me, working jointly, because you prepared the preliminary statement and I showed you what I had and we fixed it in terms we had of that, and we estimated it, and when we got to the work of bringing up the actual, tangible evidence we found that that date was too early.

Q When was it we found that to be the case?

A I don't say definitely now just when it was, but it was during—

Q It was before you gave your testimony in the interference, was it?

A I don't think so.

Q When did I work, or any one connected with my office, work actively with you about any of these matters before you gave your testimony in the interference?

A Well, that change must have been after we got into the case here.

844 Q Oh! Don't you remember as a matter of fact that you met me at Racine, or I saw you at Racine here,—When was that, Mr. Brown?—within a day or two after you met Mr. Bulkley and Mr. Podlesak up there, as you have testified?

A Yes, you were there.

Q Didn't you tell me then that you had been unable to find anything further which would in any way alter your recollection of the facts as you had stated them at the time of the interference?

A I had not found anything at that time; I had not looked beyond the drawings that I have referred to in this case.

Q When was that that you saw me in Racine?

A The last of November, or the first of December, of last year, according to my best remembrance.

Q You are not right about that, are you? Aren't you mistaken about that, about that date?

A I may be, but I was up there a number of times, and I think it was the last time that I was up there that I met you.

Q Well, that wasn't last November?

A The latter part of November or the first of December, I said. The first part of December. Perhaps Mr. Bulkley can fix the date for us.

Q Up to that time, at any rate, your recollection of these dates, you told me, was in conformity with what you believed to be the case at the time of the interference and that you knew of nothing that altered your recollection of the facts as you had given them at the time of the interference, didn't you?

A I had not—

Q Well, you told me that, didn't you, then? Told me, and Mr. Brown, that?

A I—I think so. I did, yes.

Q Why, Mr. Milton—

A I am quite sure on that.

Q You told us all about how Mr. Bulkley and Mr. Podlesak ostensibly happened to run across you in a restaurant where you were getting a meal or something, and how
845 they came and sat down and talked about everything else under Heaven and then incidentally, apparently, made some reference to this matter that you have been testifying about? Didn't you tell me that?

A I remember—

Q And you had told Mr. Brown about it before you told me about it?

A Yes, I had.

Q When you talked to me and to Mr. Brown you said you had no recollection that would alter the facts as you believed them to be and as you stated them to be at the time of the interference?

A That seems to be very clear to me now.

Q So that your changed recollection of the dates and facts, of dates, came about—

A After I had gotten into the case and I had gotten into these papers that we have been using here. I could not place it definitely before, but that fixed it.

Q When you gave your testimony in the interference case you testified, did you not, as follows:

'According to my best knowledge and belief I conceived the subject-matter of the claims in this case on or about the 15th day of August, 1908, at which time I believe I started sketches and drawings and followed these with various modifications. Finally got it in form for actual construction'—

A That is in the testimony, which I gave without referring to any of these records that I now have before me,—I have had before me—

Q Any of them?

A I say, these records that I have used to fix these dates by.

Q Which records are you using to fix those dates?

A Mr. Webster's letters particularly.

Q Did you find among any records through which you have been searching recently any drawings made by Mr. Kane other than these two or—Well, any drawings made by Mr.

Kane, tracings made by him?

846 A None at all.

Q All the other drawings relating to this low tension magneto work which you have been able to find were made by parties other than Kane?

A Yes.

Q The only two made by Kane were those two which were produced by him and which have his date and name signed to them, April 11, 1909, and April 14, 1909?

A The one of April 14, 1909 is one that I remember Mr. Kane making very specifically under my instructions.

Mr. Williams: That is not the question, and I ask the answer be stricken out.

Q What I am asking you, or what I mean to ask you, is this: Whether all of the drawings that you now know anything about relating to this low tension magneto work of the Webster Company, whether those two are not the only two so far as you know which were made by Kane.

A That are in existence today, that I have?

Q Yes, that you know of now, as being in existence.

A That I know of, yes, but I haven't access to the Webster Company files.

Q That answers the question. Thank you. These people that you say you talked with: Freeman and Solomon; who were they? Anderson, McCarthy and so on. Where did you talk with them recently, as you said you did yesterday?

A Mr. McCarthy I talked to here in Chicago.

Q Well, how about the others?

A Mr. Freeman and Mr. Solomon and Mr. Murphy I talked to in Tiffin where I went on my way home from Cleveland, the last time I was over here.

Q What is that?

A I say, I went to Tiffin on my way home to Cleveland from here. I talked to them there.

847 Q When was it you went there? This trial started on the 13th of January,—

A The 13th.

Q —didn't it?

A Yes. About the 13th.

Q We took a recess on Friday,—let's see; the 17th of January, didn't we?

A Yes.

Q And you were notified then to be back here to continue with the trial on the following Monday, weren't you?

A Yes.

Q Did you stay here or go back to Cleveland?

A I went to Cleveland.

Q You didn't stay here?

A No.

Q How many days did you stay here, then following that?

A I stayed here—I had another appointment here in Chicago, at the Stromberg Motor Devices Company.

Q How long did you stay here?

A I stayed here Monday, Tuesday and Wednesday.

Q That took it through the 21st, the 22nd of January?

A Yes; it was about the 23rd.

Q About when was it that you learned in that week that we were not then going on with the trial of this case, either here or at Madison?

A Monday.

Q What day?

A I knew it Monday.

Q But at that time it was arranged, was it not, and you understood that it would go on here on the then following Monday, which was January 27th?

A Monday of this week.

848 Q No, January 27.

A Monday of last week?

Q That is on Monday the 20th of January, when it was determined that we were not then going on and when you

learned it you were given to understand, were you not, that we would proceed on the following Monday, which was January 27th?

A Yes. It was in that week that I went to Tiffin,—last week.

Q That is the week of January 20th?

A Yes.

Q When was it you learned during that week of January 20th we were not going on with this trial on January 27th, but were going to delay it until the 3d of February? What day was it that that come about—came to your attention?

A I do not remember what date that was.

Q Well, wasn't it on that Wednesday that you left here, the 22d day of January?

A I think I knew it before that. I am a bit confused on that.

Q At any rate you went then, on that Wednesday, January 22d, to Tiffin, didn't you?

A Yes.

Q Did you talk with Freeman and Murphy and these other people?

A Yes.

Q And who went with you to Tiffin?

A Mr. Mason.

Q Anyone else?

A No.

Q Did you go to Tiffin on more than that one occasion to talk with those people?

A No; that is the only time I have been at Tiffin in a long time.

Q At whose expense did you go there?

849 A My own expense.

Q I presume you are here at your own expense?

A I am here at my own expense.

Q Now, you heard Mr. McCarthy's testimony this morning, didn't you?

A I did.

Q He said, didn't he, in substance—didn't you understand him to say that you were not in charge of any of these departments of The Webster Electric Company?

A Mr. McCarthy's statement is very true in terms of when I first went there. When I first went there I had a very small little place and I was the sole operator in that department. I didn't have charge of anything. When Mr. Munn

came to me he was the only employe I had, the only man working under me directly. Still, we didn't have a department. We simply had a little bit of space caged off on the second floor of the old building, in the pattern shop, in the pattern storage.

Q At that time there was a big plant there with several hundred men employed, wasn't there?

A Yes.

Q Then what?

A Then it developed later on we got space up on the fifth floor, when we actually made a department of it.

Q That was part of a floor, was it?

A Yes, one corner of the fifth floor.

Q When was it you took charge of all departments of the Webster Manufacturing Company?

A I never did.

Q How?

A I never did.

Q Didn't you say yesterday, or the day before, that you had charge of all the departments?

A If I did it was an error. I do not remember having said it.

850 Q Did Mr. McCarthy substantially correctly state the relationships between you and the other people and parts of the organization insofar as your having your magnet work done is concerned?

A Yes.

Q You made some kind of a written contract with Mr. Webster or the Webster Manufacturing Company under which you were operating, didn't you?

A A number of them.

Q How?

A A number of them at different times.

Q Were you under some such written contract during 1908 and '09?

A I was under a patent contract, but I wasn't under any written contract regarding my services with Mr. Webster or the Webster Manufacturing Company.

Q The patent contract was a written contract, was it?

A Yes.

Q What was the date, if you recall, of the contract, the written patent contract, under which you were operating at that time?

A I think it was 1908. I have a copy of it.

Q Can you produce that?

A I can.

Q Will you?

(The witness produced the document in question)

Q Did you find the paper, Mr. Milton?

A Right here. (indicating)

Q The date of this paper which you produce is November 23, 1907, isn't it?

A It is.

Q And that is the patent contract under which you 851 were operating until when?

A Until it was terminated, which was when you and Lemmon and Teegle and I were in Cleveland in 1912, as I recall.

Q Now, when this contract of November 23, 1907, between you and—who was it?—Webster Manufacturing Company, was terminated the settlement involved—what, in a general way, was that settlement? What were the terms or conditions of it? That was the settlement, wasn't it, which involved the payment of some \$25,000 to you?

A You drew all those papers.

Q Yes, I know; but they are a pretty complicated lot of papers, and I just want to get a few salient facts. That involved the payment of some \$25,000 to you, didn't it?

A The Webster Company was to have title to my United States patents number—cases No. 1, 2, 3, 4, 5, 9, 10.

Q That is, the low tension cases.

A And one of them was a high tension. I was to have a license under the high tension.

Q Under the one high tension?

A Under one or two of them. Four and five were both high tension.

Q Then you took title to all of the high tension applications and patents, didn't you?

A Yes.

Q I asked you whether the Webster Company bound itself to pay you \$25,000?

A Deferred payments.

Q How?

A By deferred payments.

Q Wasn't there some cash payment?

A I believe that there was only—there were three notes that were to mature in the first year, and there was one cash

payment which was to take care of the notes that the
852 Webster Company had given and didn't meet when they
were due.

Q And the whole payment of \$25,000, insofar as it was
not paid in cash, was secured by these notes, wasn't it?

The Court: Q Gave notes for the balance.

A Oh, yes.

Mr. Williams: Q The payment was either in cash or
notes, wasn't it?

A It was either in cash or notes.

Q Now, when you say that the low tension patents were
to be, or title was to be, taken by the Webster Company, the
fact of the matter is that the assignment was first executed
in blank, and was to be held by me in escrow, to be delivered
only in the event that proof should be made to me of the
payment of all the notes, wasn't that the substance of it?

A Why, I would have to look up those papers. The sub-
stance was that you were to be the trustee. Just that whole
paper, I do not believe I ever read it. The thing is a very
complicated affair to me. I got the impression of a Chinese
bible when I commenced to look through them, and passed it
up.

Q You have copies of that settlement here, have you?

A I have.

Q Will you produce that, too?

A This appears to me to be a complete set (producing
documents).

Q How?

A This appears to me to be a complete set.

Q Now, these papers which you have just last produced
include, do they not, an assignment executed in blank, under
date of April 10, 1912, of cases 1, 2, 3, 5, 9 and 10, and a so-
called agreement, dated April 10, 1912, between yourself and
Webster Manufacturing Company and Webster Electric
Company, and another so designated escrow agreement, dated
April 10, 1912, between yourself and Webster Electric Com-
pany, and executed also by me as the party who accepted
the escrow?

A. Yes.

853 Mr. Williams: These three papers we will offer now,
or have them marked for identification. Unless there is
objection, we offer them now.

Mr. Bulkley: What did you say, Mr. Williams?

Mr. Williams: I say I wish to offer these papers just pro-

duced by Milton, which I have designated as Plaintiff's Exhibit number 64. These appear to be originals. I presume you will be glad to stipulate, as I will—

Mr. Bulkley: Yes.

This will be Plaintiff's Exhibit No. 64.

Mr. Williams: Now, this contract of November 23, 1907, between yourself and Webster Manufacturing Company, I offer in the same way, and ask that that be marked as Plaintiff's Exhibit No. 65, and I presume everybody will agree that we may substitute a copy in lieu of the original.

Mr. Bulkley: Yes.

Mr. Williams: Q Now, this contract of November 23, 1907, between Milton and Webster Electric Company—

A Webster Manufacturing Company.

Q —Webster Manufacturing Company, reads in part as follows:

Now, therefore, the parties hereto covenant and agree as follows:

1. That any and all prior agreements between them relating to the aforesaid inventions or improvements in electric generators, and the aforesaid applications for letters patent therefor, are cancelled and shall from now henceforth for all time be considered cancelled and of no force and effect, and in consideration of the mutual considerations and covenants hereinafter set forth shall be and are superseded by this agreement which is entered into in the stead of any and all such prior agreements.

2. The said John L. Milton, party of the first part, hereby gives and grants to the Webster Manufacturing Company, party of the second part, its successors and assigns, 854 the sole and exclusive right and license to manufacture, use and sell, throughout the United States and territories and possessions thereof, electric generators for ignition purposes and ignition apparatus embodying and containing the said Milton improvements, for and during the life of any and all Letters-Patent of the United States which may be granted for any and all such Milton improvements.

3. During the life of this agreement all inventions or improvements made by the said part of the first part relating to electric generators for ignition purposes and to ignition apparatus for use in connection with internal combustion engines or motors; all applications for Letters-Patent of the United States made by the said party of the first part relating

to electric generators for ignition purposes and to ignition apparatus for use in connection with internal combustion engines or motors, and all patents granted to the said party of the first part relating to electric generators for ignition purposes and to ignition apparatus for use in connection with internal combustion engines or motors, and all such inventions or improvements and the patents therefor, in which he shall have or acquire any interest, shall be regarded as and shall be embraced by and included within the terms of this contract and agreement.'

Now, Mr. Milton, the patent application which was filed in the United States and which disclosed the machine shown in your British patent which was applied for on October 28, 1909,—that application and any invention involved or shown in it came under this clause of this contract which I have just read to you, did it not?

A The United States, yes.

Q And that was your understanding of it at that time?

855 A Yes.

Q And was it your understanding in 1909, and in 1910, and in 1911? Well, we will say in 1909 and throughout 1910. It was your understanding that the Webster Company had the right, was it, to manufacture, use and sell any invention made by you, and including this Plaintiff's Exhibit No. 15 type of machine, regardless of whether or not they paid for any patent application and regardless whether any patent application was filed—that that was immaterial; that they had, at any rate, the right to make and sell the machine, and that you had no right under this contract to say a word to stop them? Was that your understanding?

A Subject to the terms of the contract. That was my understanding.

Mr. Peaks: Wait a minute. I would like to object to that question.

The Court: He has answered all right; 'subject to the terms of the contract.'

Mr. Williams: Q Now, you brought some suit, didn't you, against the Webster Electric Company, as the successor of the Webster Manufacturing Company, just prior or shortly before this settlement of April 10, 1912?

A I think it was against the Webster Manufacturing

Company. The Webster Electric Company may have been made a party to it. I do not recall that. I could look it up.

Q Can you state in a general way what that suit was for?

A They had issued me some notes for royalties. When they were presented they didn't pay them. That is what precipitated the trouble.

Q Was it a suit on the note that was commenced?

A There was a suit commenced on the note. There was a suit commenced for having failed to live up to some of the other terms of the contract.

856 Q Did you allege or assert that the Webster Company's license had in some way been forfeited or abrogated at that time--terminated?

A I wouldn't say as to what the technical wording of that complaint was. I do not recall it. I can get you a copy of it, if you want it.

Q Well, regardless of the papers involved in the suit, is it a fact that you were at that time asserting in one way or another to the Webster Company that either their rights, their license, had been forfeited or would be by you terminated? Was there that pressure which forced the settlement, that is what I am getting at, the pressure of such assertions or threats?

A I wouldn't want to try to answer that from a legal standpoint. I do not know. But I will say that because the contract hadn't been lived up to, they hadn't paid the notes they gave me in lieu of royalties, and they hadn't paid the royalties, and there hadn't been reports made, all of which were called for by the contract.

Q Now, will you produce here the papers that you say you have in connection with that suit? Have you got them here in the court room?

A I have not.

Q Have you got them here in Chicago?

A I have some of them. Whether it is complete or not I do not know. I have the file where they should be.

Q Are you willing we should see all the papers that you have here in the court room, and at your hotel, that you have brought for use in connection with this testimony with this testimony of yours or this litigation?

A I have no objection to your seeing them.

Q Could we look over during the noon hour what you have here in court?

A Why, yes, readily.

857 Q I would like to do that, if you make them available.

Mr. Peaks: Counsel and the witness will go through them together.

The Witness: Of course.

Mr. Williams: Q This Gerald Cheville that has been referred to, he was a very expert chauffeur, was he not?

A Yes.

Q That is his business now, isn't it?

A I understand it is not.

Q Well, it has been, hasn't it, until very recently?

A I would say within a few months.

Q Do you know where he is now?

A The last I heard of him he was in California.

Q Wasn't he employed by the Webster people primarily because of his ability as a chauffeur and in order to demonstrate these high tension machines on automobiles?

A I would say not. The first I remember of him he was drafting in the drafting room.

Q Had he been, do you know, engaged as a chauffeur at any time before he went to work for the Webster Electric Company?

A I understood he had. In fact, I am positive he had.

Q He devoted a very large proportion of his time, did he not to keeping the automobile in shape and in demonstrating the high tension magneto upon the automobile or automobiles?

A No, he didn't spend much of his time for that. He spent a portion of his time on it.

Q He devoted most of his time to high tension magneto work.

A Most of it.

* * * * *

(Recess)

858 The Witness: There is a correction in the record I would like to make. I was in Tiffin on the 22nd of January, instead of on the 23rd.

Q I wish, now, Mr. Milton, that you would look at this blue print, Defendants' Exhibit No. 21, dated June 3, 1909, and say whether that is the blue print to which you referred in your direct testimony as having, in accordance with your belief,—for every reason, as I believe you said,—been made by Mr. Kroeplin.

(Exhibit shown witness).

A This is the drawing, blue print.

Q Now,—

A I want to modify that, and say that while the drawing in its entirety might not have been made by him, I am very sure that he made a number of the figures on this.

Q Have you talked with Kroeplin about that matter?

A I have.

Q Within a day or two?

A Not within a day or two, but sometime ago.

Q Well, you did talk with Mr. Kroeplin here yesterday, didn't you?

A But not with reference to this print.

Q Now, here is another blue print, marked Defendants' Exhibit 17, which, as I understand you, is of a tracing which was made by Kroeplin. Is that correct?

(Exhibit shown witness)

A I believe that this was made by Kroeplin.

Q Now, when you say you believe that, on what do you base that belief?

A Well, I know his character of drawing, and I could identify his style of lettering, and I see his initials are also on it; and I remember of working with him on this design.

Q Now, let me call your attention to this fact—that 859 the lettering on these two drawings,—that is, the drawing Plaintiff's Exhibit No. 21 is quite different from the lettering on the other one, marked Defendants' Exhibit No. 17. Let me call your attention particularly, for example, to the word "details", as it appears in both, and to the characteristic difference between the lettering in which that word appears in the two drawings; and let me call your attention also to the fact that in one the figure "2", for example, is always in a particular form or style, whereas in the other it is invariably in another and different style; and the same with respect to the 9's. Do you note the characteristic differences in those matters to which I call attention?

A I note the characteristic difference in some of the matters that you call my attention to. There are some of the 2's in both of those drawings that appear to me to be the same, and some of the 2's are entirely different. That has been pointed out to me by Mr. Kroeplin, as well as by my own observation.

Q When did Kroeplin point that out to you?

A Kroeplin pointed out the difference in the 2's on this blue print, this blue print of June 3, 1909, last week.

Q Notwithstanding that, you went on here, and testified in your direct testimony, did you not, that both were made by Kroeplin?

A I do not say that I did testify that Mr. Kroeplin made all of this, because I had that distinctly in mind.

Q But you are stating now what you believe to have stated in your direct testimony?

Mr. Peaks: I object.

A Yes.

Mr. Williams: Q Are you?

A Yes, sir.

Mr. Peaks: That is not competent. The witness is asked now to characterize the effect of the testimony he gave in chief. That is a matter for the court, and not for the witness?

The Court: But he is stating a matter of fact about it.

860 Mr. Peaks: It is argumentative. It is simply—

The Court: Well, let it stand.

Mr. Williams: Will you read him the question now, please? (Last question and answer read).

Q That is, as to this Defendants' Exhibit No. 21 (indicating).

A Is this (indicating) the same one?

Q Yes.

A Twenty-one, is right.

Q I call your attention to this part of your direct testimony: Mr. Bulkley asked you:

'Q. What is this blue print which I show you now?

'A This is a blue print of the working drawings of the unitary structure plug bracket for supporting the magneto, and the mechanism for operating the magneto. It is a Webster Manufacturing Company drawing, "details of Type D-2 Milton magneto for I. H. Co., 6, 8 and 10-horse power horizontal engine." The last is the legend in the lower right hand corner, and bears the date, June 3, 1909.

'Q Who made the drawing of which that is a blue print, do you know, Mr. Milton?

'A I know that—I want to modify that. I have every reason to believe that this print is from a tracing made by Mr. Kroeplin, and also that he made the drawings from which the tracings were made.'

Is that part of your direct testimony—

A Yes.

Q —to which you alluded just now?

A Yes, sir.

Q And that is where you said, during your direct testimony, that a part only of that was made by Kroeplin, and the rest by somebody else?

A Well, I did not say it—Evidently I did not finish it, but that is what I had in mind, because it had been called to
861 my attention just last week, when I asked Kroeplin to identify this.

Q So that the statement in your direct testimony is not correct as it stands here, and as I have read it to you?

A It is not completely correct.

Q Who made the other part of this drawing, that Kroeplin did not make?

A I do not know definitely who made the tracing for him.

Q Which part did Kroeplin make?

A Of the tracing, or of the drawing?

Q The tracing, of which this is a blue print.

A I believe that Kroeplin made the bracket structure, and the laminated iron inductor.

Q You are comparing the two drawings now, I notice, that is, this Defendants's Exhibit No. 17, with the Defendants' Exhibit No. 21, are you not?

A Yes, sir, and also parts, different parts of No.— and different figures, on 21, with each other.

Q Well, go ahead, and then finish your answer.

A Some of the other figures looked as though they may have been made by two different parties. I would not want to say definitely that I thought Kroeplin made any, but these ones that I have mentioned,—that is, in their entirety.

Q Now, the drawing that you have been comparing this Defendants' Exhibit 21 with, as showing the unitary structure, is a drawing which has the letters, "Drawn by W. A. K.; traced W. A. K.'s is it not?

A Yes.

Q Now, why is it that you believe certain figures on this drawing of the unitary structure were made by Kroeplin? Is it because you remember that to have been the fact, or because of your comparison of the drawing which does not have Kroeplin's name or initials, with the drawing which does have upon it his initials

A I remember working with Kroeplin, and giving him instructions on these figures, and I do not remember of 862 watching him make any tracings. I believe yet that he made all of the drawings from which these tracings were made.

Q And that is based upon a study of the drawings themselves, as I understand it?

A No; it is from remembrance of when we were working at the time, as well as looking at the drawings.

Q Now, during your direct testimony, Mr. Milton, you said, in referring to this Kane drawing, dated April 14, 1909, the following, in answer to Mr. Bulkley's question, which I will read: the question was: 'Q Did you ever see this drawing, Exhibit No. 18, Plaintiff's Exhibit No. 18'; and you answered did you; 'I remember the idea, as shown here, very plainly; I have no direct way of identifying this particular drawing'?

A Yes.

Q Now, during the further direct examination by Mr. Bulkley, the following occurred, did it not,—and in accordance with your recollection: Mr. Bulkley asked: 'Now, I will ask you again Mr. Milton, what I started to ask you before with reference to this Exhibit 18, and in connection with what Mr. Kane said you said when he, Kane, showed you this drawing, Exhibit 18; Mr. Kane said he showed you—' Whereupon I interrupted, with the following objection: 'I object to this question, for the reason that this witness has testified that he does not recall Kane ever having shown him that drawing.' Whereupon the court said: 'I thought he did.' I said: 'I do not think so.' Whereupon Mr. Peaks said: 'How about it, Mr. Milton?' Whereupon I said: 'He saw the drawing on white paper.' And then you said: 'I certainly stated this drawing here. Mr. Kane and I worked over it together; I am positive of that.'

Is that your recollection of the testimony?

A That is my recollection of the testimony. Of course, keep in mind the limitation—

Q Well, now, you have answered the question.

863 A (Continuing) —I put upon it before.

Q You have answered the question. What do you say now,—that you did see this drawing, Plaintiff's Exhibit No. 18, at the time it was made, and that you worked over it with Kane; or that you did not see it; or that you cannot

identify this as anything that you saw? Which, now, do you say is the fact?

A Why, I say that we worked over this design,—I instructed Kane upon this design. Whether this is the drawing—

Q I am asking you about the drawing itself.

A —whether this is the drawing, the absolute piece of paper that we made at that time, I do not know; I made no marks on it that I can identify.

Q So that you do not say now that you did work over this particular drawing?

A This particular piece of paper.

Q Well, the drawing is on that paper, and I call the paper a drawing; but, at any rate, you say now that you did not,—or, at least, you do not know that you worked over this particular piece of paper, in making this particular drawing with Kane; is that right?

A I cannot identify this particular piece of paper.

Q Well, am I right in what I say,—that you cannot say, and do not say now, that you worked over this particular piece of paper, Plaintiff's Exhibit No. 18, with Kane, in making the particular drawing which appears upon it now? Is that your testimony?

A I cannot say that we worked over this particular piece of paper, as I have no means of identifying it.

Q And you do not say now that you ever saw this particular piece of paper, with this drawing upon it, at about the date which it bears, that is, April 14, 1909?

A No, I do not say so.

Mr. Williams: That is all.

Q Mr. Milton, when Mr. See came out to see you on October 6, 1916,—I believe—Is that the right date?

A No.

Q Or was it October 8th?

A I think it was in January, 1917. I don't remember just when it was.

Q Do you remember the date when Mr. See came to see you?

A Just a minute.

Q And you had this conversation?

A I will give you that exactly.

Q May 8, 1916, when Mr. See came out there, and you had the talk with him, did he tell you anything about the Webster Company having purchased the Kane application?

A No, he did not tell me that. I got that information from Mr. Williams, if I remember correctly.

Q When did you get that information?

A I cannot say.

Q About when, as near as you now remember?

A It is rather difficult to fix that, and state it definitely and positively.

Q Was it prior to the time that you had the interview with Mr. See of May 16, 1916?

A I think not.

Q Now, when Mr. Williams came out to talk to you about this preliminary statement, your preliminary statement in the interference case, what did he tell you about the dates to be alleged in your preliminary statement? What general instruction did he give you?

A To make them as early as I could,—that was the safe way to make them.

Q Is that what he told you, Mr. Milton?

A That is my remembrance of it.

Q As you remember it?

865 A But I know that I was cautioned to make them as early as I could, I believe was the term used.

Q Mr. Milton, do you remember a drawing which you used in connection with the giving of your testimony in the interference case, which illustrated the complete ignition device, in the form in which it was delivered to the International Harvester Company, as a standard product?

A The drawing of that?

Q Yes, which you used in the interference proceeding? Do you remember that drawing?

A I do not remember it.

Q Have you any such drawing in your possession?

A Is that a working drawing,—supposed to be?

Q It says it is a blue print, it was a blue print.

A No.

Q The tracing of which was made by Mr. Chiville?

A I have no way—

Mr. Bulkley: Mr. Williams, I wish you would produce that drawing.

Mr. Williams: We are looking for it. We produced here, Mr. Bulkley, the drawing which was marked in the interference case as 'Milton's Exhibit No. 1, blue print of tracing of July 15, 1909'. Is that the one?

(Document produced by Mr. Williams.)

Mr. Bulkley: That is the one.

Q Mr. Milton, will you look at this drawing, and state what it illustrates?

(Document handed to witness)

A This is an assembly drawing of a Milton magneto on an integral bracket, with the sparker mechanism, as furnished to the Harvester Company.

Mr. Bulkley: The blue print is offered in evidence, and marked Defendants' Exhibit 45.

866 (The said document was thereupon admitted in evidence, marked as Defendants' Exhibit 45, and was and is as follows:)

Mr. Bulkley: Q Did Mr. Williams ever tell you anything about an affidavit which was made by Mr. Chiville, with reference to this development of the unitary plug and bracket?

A He told me that Chiville was making or had made an affidavit.

Q Did you ever see that affidavit at or about the time that you testified in the interference case, or before then?

Mr. Williams: What was the question, please? Pardon me.

(Question read)

A I never read it, if I did see it. I do not remember having seen it.

Mr. Bulkley: Mr. Williams, will you produce the copy of an affidavit which was filed, the original of which was filed in the Patent Office in connection with the proceedings in the Patent Office, of interference between Milton and Kane, made on the 12th day of May, 1916, by one Gerald D. Chiville?

Mr. Williams: I will do it, if we have it. Do you mean right now? Is that it?

Mr. Bulkley: Oh, not particularly.

Mr. Williams: Yes, Here is the original affidavit, Mr. Bulkley.

(Document produced by Mr. Williams).

Mr. Bulkley: We offer in evidence the original affidavit of Gerald B. Chiville, executed on May 12, 1916, which was filed

in the Patent Office, in the interference proceeding between Milton and Kane, marked Defendants' Exhibit 46.

Mr. Bulkley: Will you stipulate, Mr. Williams, that that has been offered as the testimony or deposition of Mr. Chi-ville in that interference proceeding?

Mr. Williams: I will stipulate whatever the record shows to have been the fact. I do not recall.

Mr. Bulkley: What record?

867 Mr. Williams: The interference record.

Mr. Bulkley: I offer in evidence, if the court please, a printed copy of Milton's record in the interference in the Patent Office, between the application of Kane and the patent of Milton, the number of which interference is 39,013, to be marked Defendants' Exhibit 47.

Mr. Bulkley: And I offer, also, in evidence, the printed copy of Kane's record in the same interference, to be marked in evidence Defendants' Exhibit 48.

Mr. Williams: We object, your Honor, to the receipt of these papers in evidence, on the ground that they are irrelevant and immaterial.

The Court: They are probably relevant on the question of collusion, possibly.

Mr. Williams: Upon that question.

The Court: But nothing else.

Mr. Gifford: Of course we do not base our case on the interference at all.

The Court: No.

Mr. Gifford: We put in the testimony here as a part of the prima facie case, as though no interference had ever taken place.

The Court: But it is a very common thing in patent cases to put in an interference record. Received subject to objection. I do not think it is material, upon any other question.

Mr. Bulkley: I also offer in evidence a copy of the file contents of the Patent Office, in the matter of the interference between Kane and Milton, the same to be marked Defendants' Exhibit 49.

The Court: That contains these same two records, I suppose.

Mr. Sturtevant: Yes.

* * * * *

The Court: You had better withdraw your printed copy then, for convenience.

Mr. Bulkley: We will see about that later, your Honor, and withdraw it, if they are both embodied in that.

Mr. Williams: We make the same objection.

The Court: It may be received, on the one question.

Q Now, Mr. Milton, you say here, or, you said here just a few minutes ago, in answer to Mr. Bulkley on redirect examination, that when Mr. See talked to you in Cleveland on May 8, 1916, about the evidence which could be produced to substantiate your claims of inventorship, that he did not tell you, and that you had not previously learned from me, that the Webster Company had acquired the Kane application. That is what I understand you to say. Is that right?

A I do not recall Mr. See's having mentioned that to me at that time; and yet, I positively, do not remember it.

Q All right. And you say that you had not previously learned of that fact from me. This is what you said to Mr. Bulkley here just now? Was it not?

A I do not remember just when I did learn, and I do not think I knew it at that time; I think that is what I said.

The Court: Yes, that is what he said.

Mr. Williams: Q Well, now, you do remember that Mr. See asked you, when he talked with you, whether you would be willing, in view of all the evidence which would be secured from these witnesses that you had named, that is, Munn, Chiville, Webster, Kane, and all of them,—you do remember that See asked you whether you would be willing to execute a concession of priority to Kane, don't you?

A Yes, sir.

Q That you do remember?

A Yes.

Q Now, what earthly reason can you suggest now as to why See would have proposed to you executing a concession of priority, unless the Webster Company owned the Kane application? Did he give you any reason, when he talked to you, for asking you to execute that concession of priority, without your knowing that the Webster Company, whom Mr.

See represented, owned also the Kane application?

869 A Did he give me any earthly reason, do you say?

Q I guess I asked you an improper question, as to whether you could suggest any earthly reason why he would

have asked you to execute the concession, without your knowing that we owned the Kane application. But I will ask you the proper question,—as to whether, when he did ask you to execute, or whether you would be willing to execute the concession of priority to Kane, whether he did not say anything about, and you did not know anything about the fact, whether the Webster Company owned the Kane application.

A Well, I will tell you—I might have known, at that time, but the thing has escaped my memory; I do not recall of having known, at the time I talked to Mr. See.

Q Well, then you will not swear that you did not know it will you?

A No, I do not want to commit myself on that, because I won't say definitely one way or another.

Q Now, another thing, about this Chiville affidavit; you say you may have seen the affidavit, but you do not recall having read it, as I understand?

A Yes.

Mr. Williams: Q Do you remember this, that I told you, and when I told you I referred to a written memorandum which I had made at the time, that I told you that after my first visit with you in Cleveland about this matter, on the 6th of October—

A Cleveland?

Q 1915—How?

A You didn't talk to me about it in Cleveland.

Q What is that?

A You didn't talk to me about it in Cleveland. I just want to call your attention to the fact that we both make errors.

* * * * *

Mr. Williams: Q What I should have said was Detroit, and what I want to ask you is this: After I talked with you in Detroit, on October 6, 1915, I saw you again in Chicago and told you, didn't I, that during the interval I had seen Chiville, gone to see him here, and in telling you about it I referred to a written memorandum of the conversation with Chiville which I made at the time, and didn't I tell you that Mr. Webster and Mr. Brown and I went together to see Chiville, and that we first outlined the story as we had gotten it from you, to see in how far he could confirm it, and he, without saying much, nodded his head as though he was agreeing with all that we told him, told him what we understood to be the facts in the matter, and that

then, just as we were about to leave, he said, 'Now, I remember this about it, that Mr. Webster said to me and to Kane, "You boys see what you can do to work out of this difficulty, and you make whatever you can think of at home, make drawings of it and bring them down here and show it to me,"' and that Chiville told us at that time that he made some drawings at home and that Kane made some drawings at home and that they were all brought down to the office at the factory, and that his, Chiville's proposition was no good and was discarded and that Kane's was the one that was adopted; now, don't you remember that I told you in substance that?

A When was this you told this to me?

Q This was some time between the 6th of October, 1915, and May 8, 1916, when Mr. See talked with you.

A I remember your telling me—I don't remember your referring to any memorandum. I remember your telling me that you had talked to Chiville.

Q And that you had this—

A Well, the substance of the conversation. I don't remember the whole thing, but I remember, or I got the impression that Chiville was not positive in what he was saying or that he was rather going to support Kane than
871 me. I also heard from Mr. Chiville before he did give you that testimony.

Q What?

A I say I also heard from Mr. Chiville before he gave his testimony. I had a letter from him in my possession when Mr. See was over there.

Q Now, what did you say about this letter here, a moment ago, about receiving a letter from Chiville?

A I said I had—I was in possession of a letter from Chiville at that time.

Q Where has that letter been from then until now?

A In my bag.

Q Is that one of the papers that you said you would get out this morning for us to look over in the noon hour?

A I opened my case. This was one of the papers I got out of it. I opened my case and presented it to Mr. Frank and to you. I said, 'You can go through anything I have got.'

Q Mr. Frank now hands me this letter, dated Chicago, Illinois, May 5, 1916, addressed to 'Dear John,' and signed

'Gerald D. Chiville.' The envelope is postmarked May 5, 1916. Is that the letter (handing document to witness)?

A That is the letter.

Q When did you receive that letter?

A In due course.

Q That is, May 6th or 7th?

A Somewhere around there.

Q 1916?

A Yes, sir.

Q This letter was addressed to you at 3000 West Grand Boulevard, Detroit, Michigan, was it not?

A Yes, sir.

Q That is the letter which reads as follows, is it not: 'Chicago, Illinois. May 5, 1916. Dear John: Mr. Robert M. See, of Williams, Bradbury & See, has asked me to 872 sign an affidavit containing my recollection of the originating of the idea of mounting a low tension magneto on the ignition plug casting; also of the tripping of the moveable electrode by inductor shaft yoke.

'All that I can recall now is that Mr. T. K. Webster asked Kane and me to design the most compact and simple outfit we could. We worked out our ideas separately and Kane's design was accepted and used.

'If that affidavit and the above will work against your interests in any way, I will try to get out of signing one.

'I have said I would sign one and then I thought it might affect your interests, so I write to find out.

'Mr. See says he is to see you in Detroit Monday. Please keep this letter to yourself.

'We are all well and hope you are too. Give our best regards to Mrs. Milton and the little girl. Answer this letter right away, please.

'Yours very truly,

'GERALD D. CHIVILLE,
'3449 Elaine Place.'

That is the letter that you referred to, is it?

A Yes. The reply ought to be right with that.

Q Now, let's see, Mr. See talked with you on May 8, 1916, didn't he?

A Yes.

Q So that you had this letter from Chiville before he talked with you?

A Yes, sir; and my reply mentions that fact, my reply to Chiville.

Q You didn't show Mr. See this letter you had gotten from Chiville, did you?

A No, I did not.

873 Q On May 8th?

A No.

Q You never showed it to me, nor to the Webster Company?

A No, I did not.

Q Nor to Mr. See, nor to any of us?

A No, sir.

Q Have you?

A No, sir, I did not.

Q From that day to this?

A No; I did not. There is just a little—

Q You have answered the question, Mr. Milton, thank you. Mr. Peaks: Will the reporter read that last.

(Last answer read.)

Q Now, that, of course, was all months before you gave your testimony in the interference case, wasn't it?

A Yes, sir.

Mr. Williams: I think we will offer that letter and ask that it be marked as Plaintiff's Exhibit No. 66, isn't it, the letter and the envelope?

Mr. Williams: Is this paper, which purports to be a carbon copy of a letter dated May 9, 1916, and addressed to Gerald D. Chiville, Chicago, and not signed, but bearing a name or initials, 'J. L. M.: MAC' the reply which you made to Mr. Chiville's letter of May 5, 1916 (handing document to the witness).

The Witness: A It is.

Mr. Williams: Now, this carbon copy we offer and ask that it be marked as Plaintiff's Exhibit 67.

Mr. Williams: Q Now, this letter of yours of May 9, 1916, to Mr. Chiville, read in part as follows: 'Your letter of the 5th instant reached me Saturday afternoon, and knowing that Mr. See was to call on me Monday, I delayed answering your letter until this time.

874 'The question of advising you in this matter is a rather difficult one as the events referred to transpired quite a long time ago, and it is no wonder that our minds are a bit hazy on the subject.

'Mr. See had a number of sketches with him, one in particular that was found in Brown & Williams' old files of my patent application that was never filed. This refreshed my mind very materially. It was for the type of magneto operating mechanism that I made to overcome the trouble encountered with the first I. H. C. type of spring operating magneto.'

A It was either the two or the single link; I can't say now.

Q At any rate, something preceding—

A Yes.

Q —the apparatus of Plaintiff's Exhibit 15 type?

A Yes.

Q Now, that letter goes on: 'That he, Mr. See, had with him the sketch that was made by Kane under my instructions for the type of bracket which was finally adopted. He also had a tracing that Kane had made and which I believe is the one you mentioned in your letter. It carried the main coil springs attached to the inductor by means of studs extending through the spider, and the other and extending to the outside end of the pole pieces. This apparatus was bolted onto the spark plugs and was a two-piece affair. We never built it owing to the fact that it was impractical, very complicated, and not direct.' Now, does that, or do those passages from this letter refer to the drawing, Plaintiff's Exhibit No. 17; is that the drawing of which you were writing about to Mr. Chiville?

A If this is the same drawing that Mr. See showed me, and I think it is.

Q Well, is it the same?

A Well, I didn't make any mark on it at that time. I don't remember definitely, but if it is the same drawing
875 I would say that was my criticism of it. It is the same idea.

Q Is it your recollection that this is the drawing that See showed you and about which you thus wrote to Chiville?

A It is either this or a duplicate of it. I would say it is the same drawing.

Q Now, let's see; you wrote there that that drawing or a duplicate of it was a two-piece affair, that it was impractical, very complicated and not direct?

A (No answer.)

Q I call your attention now to some papers purporting to be some letters passed between you and myself, or my of-

fice, as follows: October 11, 1915, your letter to me; November 5, 1915, my letter to you,—make it Williams to Milton; November 19, 1915, Williams to Milton; November 20, 1915, Milton to Williams; December 30, 1915, Williams to Milton; January 3, 1916, Milton to Williams & Bradbury; January 4, 1916, Williams to Milton; January 6, 1916, Milton to Williams & Bradbury; January 11, 1916, Williams to Milton; May 3, 1916, Williams to Milton; May 5, 1916, Milton to Williams, Bradbury & See; May 6, 1916, telegram, Williams, Bradbury & See to Milton; May 9, 1916, Williams to Milton; September 11, 1916, Williams to Milton; an undated letter, Milton to Williams, Bradbury & See, saying 'In reply to your letter of the 11th instant', and so forth; October 27, 1916, Williams to Milton; October 28, 1916, Milton to Williams, Bradbury & See; October 28, 1916, telegram, Milton to Williams, Bradbury & See; December 1, 1916, Williams to Milton; December 5, 1916, Milton to Williams, Bradbury & See; December 18, 1916, Williams to Milton; December 26, 1916, Milton to Williams, Bradbury & See; December 27, 1916, Williams to Milton. Can you identify those as constituting the originals or authentic carbon copies of correspondence which passed between you and me or my firm, between the dates covered and as read to you?

(Objection)

876 The Court: He may answer the question, whether those are the letters or copies.

The Witness: I can't identify them from just such a rapid glimpse at them. I have to go over them.

The Court: Well, you can take them and look them over.

The Witness: Well, I shall do that later on.

Mr. Williams: I think I shall offer those letters now, that batch of correspondence, as Plaintiff's Exhibit No. 68. I offer them now.

The Court: I will reserve the ruling on them until he has had time to look them over.

Mr. Williams: Surely.

Mr. Peaks: If we can take them over night, we can read them over this evening.

Mr. Williams: You will find there, I think, Mr. Peaks, the originals of many of those letters you yourself have put in, and I will ask you this question Mr. Milton: To state now if you can, if you cannot now, if you will undertake before you leave to ascertain whether there were any other letters

that passed between me and my firm and you relative to the matter of the Kane-Milton interferences in addition to those which I have last submitted to you and included in this Plaintiff's Exhibit No. 68.

The Witness: I shall do so.

Q Now, you have us an opportunity during the noon hour to look over some of these additional papers which you said you brought with you, didn't you?

A Yes.

Q Do you still have some that we have not had an opportunity as yet to see?

A This file, I told Mr. Frank when he was ready for this I would turn it over to him. That completes it. (Handing documents to counsel).

Mr. Williams: That is all, except we would like to reserve the right to recall Mr. Milton when we have gone through the balance of these papers which he has submitted.

(Witness excused)

877 WILLIAM AUGUST KROEPLIN, called as a witness on behalf of the defendant, testified as follows:

Direct Examination by Mr. Bulkley.

Secretary and treasurer of the Sheet Metal & Conveyor Company. Was in the employ of the Webster Manufacturing Company from May 24, 1905, until about July 15, 1916. Started as an office or blue-print boy and ended as a sales engineer. Also worked as a draftsman. Knew John L. Milton and worked under him. Was instructed by the chief engineer of the Company, the chief draftsman. Being shown the blueprints Defendant's Exhibits 17, 18, and 19 witness stated that he made the original drawing and the tracing from which the blueprint No. 17, dated November 27, 1908, bearing No. 101, was made. Identified this by the character of his work and by the initials of his name. Witness further identified three views of the blueprint Exhibit No. 18, dated January 19, 1909, as having been made by the witness, stating that: "One view and some of the lettering on this drawing was put on by some one else." The drawing was a general assembly drawing and was to be used for the assembly of the machine. Witness made the tracing from which

the blueprint Exhibit No. 19 was made. Identified it "from all the figures and wording marked on the blue print". Drawing shows the details for the double link machine—the details of the assembly drawings, No. 18—and was used for manufacturing purposes and for a record of the parts that were made up. Witness saw parts of a magneto made in accordance with the drawings No. 17, 18 and 19, and remembered of one machine being made up. Witness took a magneto machine to Milwaukee at the instance of Mr. Milton. Was accompanied by Mr. Kane—did not know Mr. Kane's first name, but he was the man present in the court room when witness was testifying. When they got to Milwaukee they went to the engine plant of the Harvester Company and attached the magneto to an engine. Being shown Exhibit No. 21, and asked if he could identify it as the print the original drawing of which he made, witness said: "I can identify some of the details on this drawing" as having been made by me. Could not say definitely whether it was Mr. Milton or Mr. Webster who sent him to Milwaukee, but at that time he was working under the direction of Mr. Milton. Being asked to identify the various details of the drawings No. 21 which were made by the witness, he said he could not describe them "absolutely" on account of several details have had changed dimensions" and that he had the original paper drawing from which the exhibit was made. Was able to identify the inductor, and some of the lettering on the bracket, and lettering such as the word "reamed" on the figure right above the inductor. Did not recall whether he had ever seen any magnetos which had brackets like that shown in views he had pointed out. Further identified the figure marked "No. 10 wire" as having been made by witness. Asked whether he remembered anything about the making of separate figures, or detailed figures on separate sheets, which were given to the workmen, witness said he remembered making details for brackets and other castings for the machine on paper, Manila paper drawings, which were turned over to the pattern maker from which he made patterns. They were usually mounted on a board and shel-lacked in order to preserve them. When the various parts had been completed by the workmen the drawings would be brought to the drafting room and tracings would be made from them, and they would be all assembled together and one tracing made of the whole mechanism.

879 Being shown Exhibit No. 15 and asked if he remembered having seen any such a machine at the time he was making the figures of the drawing Exhibit No. 21, witness said he did not remember the complete machine, but remembered parts such as the spring, the rods to which the springs were fastened, the bracket—the brass casting connecting the two magnets—and the laminated bars; nothing else. Asked if at various times or frequently he did drafting work in accordance with the instructions of Mr. Milton, witness said he made the details in accordance with Mr. Milton's instructions, and never received instructions from anyone else to make drawings in connection with magneto work. Being asked to describe the usual way in which a draftsman goes to work to make a design and embody it in a drawing, witness said the customary way is to first make a pencil layout on Manila paper, and if the layout is satisfactory a tracing is made from it on tracing paper and blueprints made from the tracing. Being asked whether draftsmen ever employed any other kind of paper or tracing cloth than that which witness had described, witness testified as follows:

“My experience has always been that working with some complicated mechanism if, after you had the pencil arrangement on your Manila drawing, and you wanted to see different movements of certain parts, you would take what was called tracing paper, place it over the drawing, sketch off your parts from that, and if there were different movements that that machine would make you would move this paper to show the different movements. I remember doing that in connection with this magneto work. For instance, taking the details of the inductor, showing the different arrangements and movements of it by making a sketch or laying tracing paper over the drawing and moving this paper around.

The Court: Q I do not understand yet where you get your object from which you make your Manila sketch. Is that from a drawing also?

880 A The Manila paper sketch is made from the ideas, which in this case were given to me by Mr. Milton.

Q Well, given to you on paper?

A On ordinary freehand sketch paper.

The Court: Yes.

Mr. Bulkley: Q Mr. Kroeplin, did you ever get any in-

structions from anybody else other than Milton in connection with what work you had to do in the making of figures or drawings—the figures of Exhibit 21 or in the making of Exhibits 17, 18, 19 and 21?

A I had no instructions from anyone else."

Cross-Examination by Mr. Williams.

Q Do you mean to say it was only Milton's ideas which you embodied in all of these blue prints marked Defendant's Exhibits 17, 18, 19 and 21?

A Yes, sir.

Q Is that true of this Defendants' Exhibit 18, this double link machine?

A I said that I made these three views on this drawing. This view was not made by me.

Q Well, maybe I didn't make myself clear. Who originated, so far as you know, the double link scheme shown in this drawing?

A Mr. Milton.

Q Now, when was it that you made this Defendants' Exhibit No. 21 drawing, or, rather, the original tracing from which this is a blue print?

A I did not make the complete tracing.

Q Well, the part that you made, when did you do that?

A Prior to the sixth month, third day, 1909. I cannot recall the date.

Q How long before that?

881 A I cannot recall.

Q Well, was it within a week before that?

A Oh, it must have been prior to that, months before that, because these details would not be traced for sometime after the parts were made.

Q That is, the parts of the machine, as I understand it, would be made first, and then after that a drawing such as this Exhibit 21 would be made, is that correct?

A Yes, sir.

Q So that you did the drawing after the machine had been made?

A Parts of this tracing were made by me after the parts were made up.

Q After the actual physical—

A Parts.

Q —pieces of apparatus had been made. Can you identify the papers that I now hand you (handing documents to witness)?

A I identify these papers.

Q Will you say, briefly, what they are?

A The first letter is a letter of May 12th to me with reference to the Milton magneto patent. The second is a letter, my letter to you—

Q Dated?

A Dated the 5th month, 15th day, 1916, with reference to the Milton magneto. The third is a letter to me of May 18, 1916, and the fourth a letter of May 20th, my answer to it.

Q May 20, 1916?

A Yes, sir.

Q Did you receive the originals of these letters to you, and mail the original of your letters to Williams, Bradbury & See?

A Yes, sir.

Q In the due course of mail following the dates appearing upon these papers?

A Yes, sir.

882 Mr. Williams: We offer this correspondence in evidence, and ask it be marked as Plaintiff's Exhibit No. 68,—(marked 68a, 68b, and 68c.)

JOHN CRON ANDERSON, called as a witness on behalf of the corporate defendants, testified as follows:

Direct Examination by Mr. Bulkley.

Witness stated that he resided in Chicago, had retired from business and was not engaged in any occupation. Was foundry superintendent for Webster Manufacturing Company for 22 or 23 years prior to 1910, severing his connection with the company at the time it removed from Chicago to Tiffin, Ohio. Knew John L. Milton. Took orders from him in regard to magneto castings. Did not remember the exact time, but it was some time before the removal to Tiffin. No one gave witness orders to receive instructions from Mr. Milton regarding castings. Witness was one of the stockholders of the company and knew the capacity in which Mr. Milton was hired. It was as an expert gas engine man,

hired to get up a magneto. Witness made castings in accordance with his instructions. Could not say definitely how many times, but perhaps twenty-five or fifty times. Witness was opposed to the making of the castings because they interfered with his other work, and so expressed himself to Mr. Milton. Witness thought he might be able to identify some of the castings he made for Mr. Milton. Was shown Exhibit 15 and then Exhibit 12, and said: "Yes, these are very familiar. I think that—I am quite sure that—we made this, both this casting here and this. That is 15 and 12.—That is the bareket on each of them." Witness did not make any castings for magnetos except in accordance with instructions given to him by Mr. Milton, and never heard of anybody by the name Kane while witness was in the employ of the Webster Company. Witness knew Mr. Munn but received no instructions from him regarding castings for magnetos. Asked if Mr. Milton bothered him a good deal about the castings, witness said: "Oh, no. He would come down there perhaps just before the blast went on, or just before we started up, and coax us to get it in that day."

Cross-Examination by Mr. Williams.

The attention of the witness was called to what counsel described as the monogram 'IHC' on Exhibit 15, witness did not know if those were the letters. Identified the number 7380 on the exhibit, and on Exhibit 12, the legend 'G-7384'. Stated that in both instances the numerals, etc. were a part of the pattern from which the castings were made. They were the Webster Company's code numbers for the parts. Witness thought so because they appeared on the castings. Asked if he did not think the International Harvester Company made the castings, he said: "I wouldn't say as to that. I made castings like those for the Milton magneto. I wouldn't say that I made these castings, but I made castings like these for the Milton magneto." Witness could not state exactly when he made them. Witness was with the Webster Company until it moved to Tiffin, in 1910, and afterward. They had made the castings referred to at any time up to the time he left the company.

H. J. PODLESAK, recalled, as a witness on behalf of the corporate defendants, testified as follows:

Direct Examination by Mr. Bulkley.

Witness remembered having had an interview with Mr.

Milton about an engine known as the Merwin engine in 884 the latter part of 1908 or early part of 1909 while witness was in the employ of the Aermoter Company. Asked how he happened to see Mr. Milton on that occasion, witness stated that Mr. Milton or Mr. Webster used to call him down to see anything new or relating to any trouble—when they had something to show him or something to ask him. Had two or three conversations with Mr. Milton about the Merwin engine. Saw the engine running. Asked to state the substance of those conversations, witness said:

“Well, when they first put the magneto on it was one of those—the lever—it wasn’t the unitary structure; and the engine gave quite a lot of trouble. It wouldn’t run at full speed. The thing would shift out of time. And either Mr. Milton or Mr. Webster called me down there—I do not remember who now—and we saw the engine running, had it running.”

The magneto was mounted on the boss of the cylinder. Mr. Milton asked witness whether the Harvester people would be willing to strengthen the casting around that boss, and witness told him they wouldn’t and that it wouldn’t be advisable to do it, but that what they could do was to extend the pad to which the igniter block was fastened and attach the magneto to that. Being shown Defendants’ Exhibit No. 20, witness stated that it represented a cylinder of a horizontal engine with a head bolted to it, and illustrated the igniter opening on the side and an extension of the igniter pad. The Merwin engine was supposed to run at a speed of 450, which was not an unusual speed for that size of engine. Being asked whether any other suggestions were made at any of those conferences in connection with the Merwin engine, and as to how to remedy the defects, witness stated that there were a good many suggestions made, in fact so many that they would probably make half a dozen different kinds of igniter attachments. There was one suggestion made by Mr. 885 Milton, or, rather, he asked witness whether the Harvester people would be willing to extend the flange of the

igniter block so that the magneto bracket could be attached to that instead of being attached to the cylinder itself on the pad.

Cross-Examination by Mr. Williams.

Witness never saw the drawing, Defendants' Exhibit 20 until he saw it on the tables in the court room within a day or two before he testified. It was not present when he had any of the conversations referred to with Mr. Milton. Asked a further question by Mr. Bulkley, witness stated that he knew the engine referred to as the Merwin engine because Mr. Milton told him it was for Mr. Merwin.

Plaintiff's counsel being asked to produce the originals of the four blue prints Defendants' Exhibits 17, 18, 19 and 21, plaintiff's counsel stated to the court that while they were objected to as immaterial, no objection was made to them as being secondary.

JOHN L. MILTON:

Mr. Milton resumed the stand to state that he had examined Plaintiff's Exhibit No. 68, and that he had not found any other letters in his files pertaining to the subject of that correspondence—that the exhibit was the complete file of the correspondence, so far as he knew.

Plaintiff's counsel requested that the several papers or letters constituting Plaintiff's Exhibits 68 and 67 be numbered, respectively, as 68-A, 68-B, 68-C, and so on, and in the other instance, 67-A, B, C and D. It was agreed that copies of the original letters from Mr. Milton's file might be substituted for the originals, the latter to be retained by the witness.

886 Defendants' counsel offered in evidence as Defendants' Exhibit No. 50 a letter from Webster Electric Company to Hood & Schley. Plaintiff's counsel objected to the exhibit as irrelevant and immaterial but admitted its authenticity, Objection overruled and exhibit admitted.

TOWNER K. WEBSTER, recalled for further cross-examination by Mr. Peaks:

Witness stated that he had read the original affidavit of Gerald D. Chiville, sworn to May 12, 1916, before Albert G. McCaleb, notary public, but did not know whether this was the affidavit used in the interference proceedings in the Patent Office between the Kane and Milton patents; did not remember anything about it. Asked if there was anything in the affidavit which he wished to contradict, witness said:

"A. Well, there is one phrase there in which he suggests that I spoke about the kind of a design I wanted made.

Q. Will you please refer to the passage that you have in mind, particularly, and read it out loud?

A. (Reading) 'In the spring of 1909 Mr. T. K. Webster, Sr., the president of the company, asked Mr. Kane and me to see if we could not design unitary structure by which the spark plug carrying the contact, and also the inductor generator, could be mounted together on a single support, so that they could be removed from the engine, and replaced, without affecting the adjustment between them.

Q. Yes.

A. I certainly did not speak anything about a unitary design. I know the whole thought in my mind was at that time that here was rather a desperate situation, and Kane had been out on the road and seen the troubles. Mr. Chiville was working in that department; and I remember distinctly 887 going up there, and saying, 'Now, here, boys, I will offer a prize for the best design to remedy these troubles.'

Q. And you say that what Mr. Chiville says about it in that affidavit is not true?

A. I say it is incorrect."

The affidavit referred to by the witness was Defendant's Exhibit 46.

Plaintiff's counsel offered in evidence the sample of Defendant's Machine Type B, which was referred to during the examination of previous witnesses but not formally offered in evidence, and the same was marked Plaintiff's Exhibit No. 69.

HENRY W. CARTER called as a witness on behalf of the corporate defendants testified as follows:

Direct Examination by Mr. Mason.

Age 52; residence Chicago; mechanical engineer and patent expert. Plaintiff's counsel admitted the competency of the witness to testify as an expert in connection with the devices involved in this case. Witness stated that he was familiar with the Kane patent in suit and had read the testimony of plaintiff's expert witness, H. B. Webster, with regard to the alleged improvement shown in the patent and particularly pointed out in claims 2, 3, 7 and 8. Witness stated he had also examined the old Milton magneto mechanism, Plaintiff's Exhibit No. 11, and the later Milton magneto mechanism, Plaintiff's Exhibit No. 12; also plaintiff's commercial magneto mechanism exemplified by Plaintiff's Exhibits Nos. 43-48, and Defendant's Types A, B and C and previously offered in evidence; following which the witness testified as follows:

888 In speaking of the Kane patent, Mr. Webster, among other things:

'The problem, therefore, with which Mr. Kane seems to have been confronted in his efforts to improve the old style magneto involved, whether he recognized it or not, what might be called a sort of 3-point synchronism; in other words, to use that oscillating magneto and a make and break igniter to its full advantage, it is necessary that the contact electrodes must be separated at a pretty definite time with regard to the cycle of the engine, and that the current impulse produced by the magneto generator must occur at almost the exact instance at which the contact electrodes are separated; the spark must be timed in respect to the engine, and the oscillating of the rotor must be timed with respect to the separation of the spark contacts.'

I will ask you to state whether there was anything new at that date, in recognizing the attributes thus recited as being embodied in as oscillating magneto equipped for an internal combustion engine?

A Not at all. Those attributes were perfectly understood, and fully set forth in the old art, and the solution of them was not peculiar at all to the unitary device which is involved in this alleged Kane invention. Moreover, the unitary device

does not solve all the problems, or possess all the attributes, as, for instance, that in regard to the accuracy of firing with respect to the movement of the piston; that is not a matter which is particularly helped by the unitary construction, at all. And, as for the so-called problem of obtaining a synchronism of the inductor or rotor of the magneto, relatively to the time when the electrodes separate to make the spark, that not only was recognized as a necessity of all such apparatuses before this time, but it is simply a matter of good workmanship and ordinary common sense in mechanical design, whether you get it in a two-piece structure, or in a one-piece structure; that is to say, it is perfectly possible to get it in a device that is not unitary; and there are many engines in use today that use the two piece structures. The International Harvester Company's engines, as made today, for example, do not use the unitary bracket at all; they use the same old two-piece structure in certain lines of their engines that was used prior to this invention; I do not mean the same, exact device, but I mean to say that a two-piece structure, as distinguished from the one-piece structure,—a separate mounting of the magneto on the engine, as distinguished from mounting the magneto on the plug. In another of their engines they use the rotary type. But in none of their engines as offered for sale today do they use the one-piece structure, or do they mount their magneto on the plug; they simply gave up that device, or that so-called improvement, which has been testified as being made for their particular benefit back there in 1909, and have gone back to the old two-piece construction. I speak of that simply as showing that this so-called problem was not inherent at all, or did not exist at all, so far as the broad proposition of the two-piece structure, as distinguished from the one-piece structure, is concerned.

Mr. Williams: Let me interpose an objection as to the testimony of the witness, as to what the International Harvester Company may now do, on the ground that it is incompetent. When I offered to admit that Mr. Carter was qualified, it was as an expert to express opinions, and not to testify to a fact; and he has not shown a basis for any testimony as to the fact.

The Court: He is merely giving it by way of illustration of his idea. I think it may stand.

(Exception)

A (Continuing) As showing the entire, complete recog-

dition of these peculiar attributes that Mr. Webster has 890 referred to in connection with this so-called Kane invention, I would call particular attention to the Weber patent No. 820,535, of May 15, 1906.

Without stopping to go into the details of this mechanism, at this point, I would simply point out that the device shown in this patent is an electric igniter for explosive engines of the same general character as the devices which have been heretofore considered, and as the device which is shown in the Kane patent in suit; and then would call attention to several statements made on page 3 of the specification, in the last column; thus reading, beginning at line 87, the patent states:

"The crank arms 26 and 41 are so adjusted upon their respective shafts that the screw 27 will be struck by the crank hammer arm 41 at a time when the current generated in the circuit will be near its maximum strength."

Agtn, in the following sentence:

"The hammer arm 41 striking the anvil mechanism, consisting of the screw 27 and the crank arm 26, will cause the electric rock electrode—rock shaft 24 to oscillate, so as to separate the electrodes 5 and 25 at the time when the strength of the electric current in the circuit is at its maximum strength."

Now, here you have pointed out in this old Weber patent exactly what Mr. Webster has called attention to, that is, the necessity of having the rotor of the magneto and the moveable arm of the electrode so related and adjusted to each other that the hammer blow which the movement of the rotor applies to the moveable electrode to separate the contacts will occur at just the time when the current generated by the rotor is at its maximum.

Now, that is an entirely separate and distinct thing from the other requirement of synchronism, the other requirement of the three-point synchronism, as used in Mr. Webster's expression, which is the synchronism between the engine 891 and the time when the magneto is tripped,—the synchronism which determines when the spark shall be produced in the cycle of the engine, or in the movement of the engine piston.

Now, this, again, is set out in the Weber patent here, beginning for example, at line 114, where the statement reads as follows:

"After the engine has begun to run at its regular speed,

the adjustment of the time for producing the spark between the electrodes 5 and 25 may be obtained with great exactness, so that the charge may be fired at the exact time required for the greatest efficiency."

Again, at line 126, the statement occurs:

"It will be understood that if the engine is to be run at a rapid speed, it is necessary to fire the charge sooner than when the engine is running at a slower speed; so, when it is desired to increase the speed of the engine to secure the greatest efficiency from the expansive force of the charge in the cylinder, it becomes necessary to fire the charge earlier. This may be done as described while the engine is running, by turning the screw 45 in the proper direction to advance the plate 42 toward the arm 65, after which the screw 44 is tightened to preserve the adjustment obtained.

"Anyone versed in the art will understand the great advantage of being able to adjust the time of firing the charge while the engine is running at its regular working speed, as at this time the operator can exactly determine the proper time for producing the firing spark."

There are other patents besides the Webster patent which make reference to this same necessity of having the synchronism necessary,—and it may be said that from the earliest time of the magneto art, this thing has been recognized.

892 Mr. Mason: Q It seems to have been assumed by Mr.

Webster that the structure set forth in the Kane patent, in which the magneto is mounted on the plug, necessarily eliminated the difficulties with respect to both features of the so-called 3-point synchronism, in other words, the timing of the spark with respect to the cycle of the engine, on the one hand, and the timing of the separation of the electrodes at which the spark is produced, with respect to the oscillation of the inductor, so as to generate the spark at the moment the current curve is highest, on the other hand. Have you any further comment to make on this situation?

A Simply to repeat, that these two points or two sections or parts of the so-called 3-point synchronism have no necessary relation to each other at all. The commercial devices here in the court room, particularly the defendants' and plaintiff's unitary structures, show that these devices separated from the engine and operated by the hand contain in themselves the synchronism between the opening of electrodes and the movement of the rotor, so as to produce a fat spark, the maximum spark of which the device is capable, and they

will produce it just the same, whether it is worked with your hands, or is worked by the engine, whether it is on the engine or off the engine, and no matter what time in the cycle of the engine the spark is given, the spark itself will be produced, just the same. In other words, this sparking mechanism is independent completely of the question of what time in the movement of the engine the spark is produced. Just so, the mounting of it, the mounting of the device, the mounting of the magneto, as a unitary mechanism with the plug, the making of it a one-piece structure, has no particular effect on the question of the accuracy of timing, as to the production of the spark at the right moment in the cycle of the engine. The same shifting about of the device, the unitary device, which was objected to in the old Milton magneto structures, of

Plaintiff's Exhibit No. 11, if it occurs with the unitary device, will throw the timing of the engine out, just the same as it would with the other, with the old devices; that is to say, if you permit your unitary structure to rock in its attachment to the engine, so as to change the distance between the trip arm and the push rod of the engine, the throwing out of the timing will occur just the same in the one case as in the other, that is, just the same whether you have the one-piece unitary device as when you have the old two-piece device.

And this is brought out particularly in the Podlesak re-issue patent in suit, where one of the features of the invention which Mr. Webster has called attention to consists in fastening the one piece structure so accurately on the engine that it will be prevented from rocking.

The Podlesak specification, which relates entirely to the one piece structure, sets forth, in its opening paragraph, quite at length, this very problem of the necessity of holding the magneto rigidly to the engine in order to prevent interruption or mal-adjustment in the timing of the spark with reference to the cycle of the engine. And one portion of the invention claimed in that Podlesak re-issue patent is a structure by which this is prevented.—The structure which involves what Mr. Webster referred to as the dowel pin proposition.

Q The Podlesak patent to which you referred was the re-issue patent 13,878 in suit, was it not (showing a paper to the witness)?

A Yes. And I will quote from the paragraph of the specification to which I refer, beginning at line 38 of page 1:

"The actuating means for rotor and moveable electrode is mounted on the engine cylinder or other suitable part, and is operatively connected with some moving mechanism, and has no connection with the magneto or igniter, since the actuator, which may be a push rod rotating, or oscillatory arm, or the like, merely contracts with the trip finger of the 894 rotor. As the igniter and generator must be removed from time to time for cleaning the electrodes, and other reasons, it is of great importance that the igniter and generator be replaced in exactly the same position it was before the removal, otherwise the push rod will not be disposed in proper relation to the trip finger of the rotor to accomplish satisfactory results in the operation of the engine, generator and igniter. The reason for this liability of the igniter being replaced in a different position from that which is originally occupied, when all the operating parts were adjusted to accomplish the best results, is due to the fact that the holes in the body of the igniter for receiving the bolts or fastening studs are made larger than the bolts or studs, as is also the opening in the engine cylinder for receiving the body of the igniter, this "latitude" between the parts being provided so as to facilitate easy removal and to obviate the necessity of careful and extensive machining and fitting of the parts by reason of the liability to error in replacing the igniter; there is provided an arm or equivalent means on the igniter body to inter-engage with a fixed part on the engine cylinder, so that there can be but one position in which the igniter can be attached to the cylinder, and that position is the one where the push rod or other actuator is in proper relation to the trip finger of the rotor."

So far as this improvement is concerned, it will be obvious, I think, that the improvement would be just as applicable and the difficulties referred to are the same, if the magneto is mounted separately from the plug. Here it is simply a question of the relation of the trip finger to the push rod, and that relation must be maintained in order to obtain nicety of firing, whether the magneto is a separate unit, or is in one unit with the plug.

Referring to Exhibit No. 11—A, is it?

895 Mr. Mason: Eleven, I think.

Mr. Williams: Eleven.

The Court: Well, that is the—

A The old Milton magneto (indicating).

The Court: The old Milton magneto.

A —in comparison with Exhibit 12—These are plaintiff's exhibits—the magneto has been identified as that of the Kane patent—it will be clear that what Mr. Podlesak was talking about in his specification applies equally as well to the one as to the other. If this rocks (indicating)—and by "this" I have reference to 12,—the unitary structure,—if this rocks, as he points out, the distance between the push rod and the trip finger of the magneto is changed, and consequently the magneto will not be fired at the same spot in the revolution of the engine that it was before; and this is just the same situation which was developed, and has been testified to, with regard to the old Milton magneto, Exhibit 11, both the making of the device unitary, or in two parts, has no particular bearing on this third point of the so-called three-point synchronism referred to by Mr. Webster.

Mr. Mason: Q I will now ask you to compare the structure of the Kane patent in suit, as set forth in claims 2, 3, 7 and 8, with the analogous structure of the prior art, calling your attention particularly to the old Milton magneto, as exemplified Exhibit No. 11, to the Milton patent No. 1053107, filed January 30, 1909, and to the following prior patents: Weber, 820,535, dated May 15, 1906; Wattles 909,264, dated January 12, 1909; and Hennig 916,312 dated March 23, 1909.

A The magneto of the Kane patent in suit, exemplified by Plaintiff's Exhibit 12, and also exemplified by the demonstrating device, Plaintiff's Exhibit 47, so far as its magneto structure is concerned, is obviously almost identical with the old Milton patent.

896 Q What exhibit have you there, Mr. Carter, with that old Milton magneto?

A Plaintiff's Exhibit 11. The difference between the two structures exists in respect to the relative arrangement as between the magneto and the plug, that is to say, the old Milton magneto was a two-piece structure, the plug being entirely separate, and the new Milton magneto, exemplifying the device of the Kane patent in suit, is one in which the magneto is mounted on the plug, where you have a one-piece casting, which includes the plug, and the support for the magneto.

Now, this idea of mounting the magneto on the plug was disclosed in the Weber patent, No. 820,535, to which I have already called attention.

The Court: What figure? What figure of the patent shows that?

A Figure one and figure seven; figures one and seven perhaps show this most clearly. There is just one distinction which should be drawn here, and that is that while the magneto body, the magnets, rotor, the so-called yoke or hammer part of the rotor, the electrodes, including the moveable electrodes, are all mounted together as one part, one unitary structure; the spring which shoots the magneto, or shoots the inductor or rotor, so to speak, is not in this connection, on that same bracket. I will call attention to this detail a little further, later, and comment on its bearing; but just at this moment I would call attention particularly to the general construction, and in doing so I would like to use a model which I have had prepared here, and which I identify as substantially involving the disclosure of the Weber patent, as I understand it.

(The witness produces a model, and indicates on same).

In this model it will be observed that the magneto proper is in one unit with the plug, not by reason of an integral casting of the plug, but by reason of the fact that the shelf 897 on which the magneto is mounted is rigidly secured to the plug, or to the flange of the plug, and this enables the device to be taken off and put on as a single unit, including the electrodes, and the rotor, or inductor, and the hammer arm, which corresponds to the yoke arm of the Kane patent. The one thing lacking, as to the magneto equipment, now, is the spring.

The Court: Q You mean the yoke spring?

A Yes.

Q The heavy spring?

A The heavy spring of the magneto, which is designated fifty in the Weber patent, and which is, as I have already pointed out, mounted on a separate bracket in the Weber structure.

Now, so far as any synchronism is concerned, involved in the production of the spark at the precise time when the current strength is highest, or is at its height,—is at its maximum, this device is as perfectly synchronized as any of the devices here that are said to involve the claims of the patent in suit, whether plaintiff's or defendants' construction. In other words, the relation of the movable electrode, with its operating arm, and light spring, is maintained here (indicating) just as permanently—I should have said, the relation to the rotor, and to the hammer arm of the rotor, is maintained

here just as permanently as in the Kane patent or in any of the devices of the plaintiff's or defendants', which are alleged to be claimed under the Kane patent. And this device, being taken off, can be tested for a spark, in the same way as the other devices.

Your Honor will see, as I operate it, that the spark is produced (illustrating) exactly as is the case with the devices of plaintiff and defendants that are charged with embodying the Kane invention.

Mr. Williams: Q Would you do that again, please? Will you do so where I can see what you are doing?

898 A I simply pull on this lever (indicating).

Mr. Mason: Q Won't you state a little more fully just what you did Mr. Carter?

A I placed my thumb on the lever 40, which is the hammer member connected with the rotor, the part which corresponds with the yoke in the Kane patent in that respect, and by giving it a twitch,—strike the moveable electrode, at the same time of course giving a twist to the rotor element to generate the current, and when the lever 40 in its movement strikes the arm of the moveable electrode, why, it operates exactly as it operates in the complete device, or as any of these devices do; it separates the electrodes at the time that the current is being generated by the rotor.

Q May I interject a question just there? You do, then, substantially what is done by the springs, when you do that,—by the spring, I mean, in the actual operation of the device?

A By the spring 50.

Q The big spring, I mean.

A Yes. I simply do with my hand what is done by spring 50 in the actual operation.

(Witness illustrates.)

Now I have replaced the magneto and ignition block on the frame work which corresponds with the engine cylinder, and by operating this push rod, your Honor will see that the spark is generated just as in all of these other devices.

My view of the matter of this Weber patent, therefore, is that here we have a complete disclosure of the essential proposition of mounting the magneto on the plug so as to make a unitary device of the magneto and the electrode mechanism carried by the plug, and so that the device can be taken off and put back, and the electrodes cleaned, without

affecting or changing any of the adjustments in the magneto itself. The only difference, as I pointed out, is, here, that the heavy spring, which in practice shoots the magneto, is in this Weber patent mounted on a separate bracket, shown at 49 in the Weber patent—in the Weber drawings; and this difference, while it is practically of, and is a difference which in practical commercial—which, as a practical commercial consideration would undoubtedly be of some importance, does not in the least interfere with the permanency of the synchronism, which Mr. Webster has pointed out, has regarded as peculiar to the Kane improvement, that is, the synchronism between the rotor and the moveable electrode, which produced the separation of the electrodes and the generation of the spark, at the time when the current curve is highest. That idea is as perfectly disclosed here as it could be, if the spring were built in as a part of the magneto itself; and this brings me further to state the conclusion, that this question of whether the spring is a part of the magneto, or is separate from it is not a question at all of unitary or non-unitary structure; it is simply a question of the character of magneto device that is selected. If, for example, the magneto here, instead of being one in which the spring was a part of the connecting rod, if the magneto selected was any of the old magnetos, like the old Milton magneto, or the old magneto of the patent to Hennig. If either of these old magnetos were mounted on the shelf here, were bolted on the shelf of the Weber patent, in place of the magneto, the style of magneto which Weber actually shows then without any change whatever, without any change in mode of operation whatever, the device would not only have the unitary features as to the magneto proper, and the ignition block, but would have the self contained spring arrangement; in other words, the proposition of building a magneto with a self contained spring, so that the magneto carried the spring with it wherever it was moved, was common in the art, and it simply happens that Weber did not in his showing select that type of magneto. This type of magneto is shown on—

The Court: Fig. 2.

A Fig. 2 of the Hennig patent, and is shown in the old Milton magneto patent of 1909, Figure 2. I refer to Milton patent No. 1,053,107; this patent was issued several years later, but was filed January 30, 1909, and it substantially

shows the device which has been offered in evidence as Plaintiff's Exhibit No. 11, the old Milton magneto structure. I do not mean it shows all the details of it, but it is substantially the device of the patent.

Now, with regard to this device of the Weber patent, I wish to state that my authority for the bolting of the shelf directly to the plug, I mean the shelf which supports the magneto, is particularly taken from the paragraph beginning at line 17 of page 4, which reads as follows:

'In order that the crank arm 26 and the hammer arm 41 may hold their relative positions with respect to each other intact, I prefer to mount the plate or board 13 upon a horizontal bracket 53, the inner end of which is provided with a vertical flange 54, secured rigidly to the igniter block 3.'

I wish particularly to emphasize those words, 'secured rigidly to the igniter block 3.' Now, the drawing, or the specification does not particularly state what it is that secures this up-turned flange 54 of the shelf 53 to the igniter block 3; it simply states that it is rigidly secured, and the drawing shows the heads of two bolts, particularly, in Figs. 1 and 3; and from the description I understand that those bolts go through the shelf into the igniter block, and secure those two parts rigidly together. That is all the description there is as to this particular feature of the construction.

901 'Except that the same paragraph proceeds to state that the igniter block 3, which is such as are commonly used in engines of this type, may be sent, together with the magneto electric machine, and some of the parts connected therewith, and fitted to an engine, in lieu of a similar igniter block provided with another sparking mechanism.'

The fact that this paragraph not only states that these two parts, that is, the shelf and the igniter block are rigidly secured together, but states the reason for it, to-wit: in order that the crank arm 26, which is the arm corresponding with the yoke of the Kane patent, and the hammer arm 41—I have got that just reversed—the crank arm 26 is the moveable electrode, and the hammer arm 41 is the one which corresponds with the yoke of the Kane patent,—in order that these parts may hold their relative positions with respect to each other intact.

Now, that is exactly the reason which has been set forth here as the reason for making the unitary bracket structure of the patent in suit,—the necessity of maintaining intact

these relative positions of these parts, so that if you took the device off, you would not disturb it. That is set forth in so many words in this Weber patent.

Now, perhaps I should say with respect to this feature of the Weber construction, that is, the rigid securing of the shelf to the igniter block, that I know that the view was advanced before the Patent Office that these bolts, the heads of which are shown in Fig. 3 and in Fig. 1, and which I have assumed to be the members which rigidly unite the shelf to the igniter block, do not screw into the igniter block, but pass loosely through holes in the igniter block, and actually have their connection, their screw connection, in the cylinder of the engine, back of the igniter block.

902 There is nothing in the drawing which could lead one to conclude one way or the other with regard to this point; and there is no definite statement in the specification with regard to it, I mean with regard to exactly where, in what part, the screw thread is placed; but I wish to state that in my judgment the view is untenable, that is, the view that the bolts refer to do not really unite the igniter block and shelf, but unite the cylinder and shelf,—the igniter block simply being a space block that happens to intervene between them. That view in my judgment is untenable, in view of the express language of the specification here which states that it is the shelf, through its horizontal flange,—the shelf which is rigidly secured, not to the engine cylinder, but to the igniter block; and in view of the statement of the reason for doing this, that is, the maintenance of the parts, the hammer arm and crank arm, the parts of the magneto, and the moveable electrodes, intact, as to their relative positions. Now, to my mind it is absurd to talk about that maintenance of those positions intact as meaning only intact where they are on the engine; of course they remain intact when they are on the engine, as long as the bolts are tight; it is when you take them off the engine that the danger of separating them is met with; and the statement of this requirement, that they be kept intact,—in connection with the statement that they are kept intact by reason of the fact that the magneto supporting shelf is rigidly secured not to the engine cylinder but to the igniter block, gives no possibility for any other reasonable construction in my judgment than that the bolts at this point unite the magneto supporting shelf directly to the

igniter block, so that they come off and go back together as a unit.

903 The Court: Q Is figure three in the Weber patent the only place where this shelf is shown?

A No, Your Honor, It is shown—well, just a moment. The shelf is shown also in Fig. 4.

The Court: Yes.

A The shelf is 53.

The Court: 53.

A And in Figs. 7 and 8. I do not know that there is any other showing here that throws any light on that particular proposition. Fig. 2, which is a rear view of the igniter block, or an inside view of the igniter block, a back view,—shows holes there, or indicates holes opposite the positions of the screws, but that would be the natural construction, the natural way of machining them.

Your Honor will see that the same thing is true of this model, regardless of whether those holes are threaded holes, which the screws engaged, or were smooth holes which the screws simply passed through to engage the cylinder,—the natural way to make the hole in such a piece is to run it right through; and that this is true is further indicated by the fact that at the left hand side of this Fig. 2 your Honor will observe what looks like a hole there half way up the block, which is the hole corresponding to this pin 30,—that holds the spring, and which under no circumstances could or would extend through into the cylinder,—the showing of hole there is as unnecessary as the showing of the hole below. That is, it would not be absolutely necessary to have any of these holes bored clear through, but of is the natural way for the mechanic to do, is simply to slap a hole right through there, the thickest part in it.

904 I may say with regard to pin thirty that the model shows it correctly where it is a straight pin, but that is a detail that has no bearing upon the comparisons, and is due to the fact that the model maker for convenience has adapted a commercial form of block, or igniter block, similar in form to the one which has been introduced by the plaintiff as the Fairbanks-Morse Igniter Block.

Can you give me that exhibit, the Fairbanks-Morse Igniter Block?

The igniter block which the model maker used for convenience is simply the one that is used on defendants' structure

which is introduced in evidence as Plaintiff's Exhibit, Defendant's machine, Type B. This igniter block being of a little smaller size than the relative proportions shown in the Weber Patent it is necessary to curve that pin out there.

This explains also why the bolt which holds the igniter block in place is shown as going through a slot instead of through a round hole. That has nothing to do with the situation except that it happened to be convenient to use that form of igniter block.

I think that is all that is necessary to say with regard to this Weber patent and model.

I would next call attention to the Wattles patent, 909,264, dated January 12, 1909.

I call attention to this patent more particularly for the purpose of showing another instance in the old art of the unitary magneto and bracket structure. I meant the unitary magneto and plug structure, unitary ignition block and magneto ignition plug in this case, which has a direct screw thread engagement with the cylinder which is like the ordinary spark plug in an automobile engine.

905 This is particularly well shown in Fig. 2 and 3. The magneto, it will be noted, is clamped by the bracket 26 on an extension of the plug.

Now the Wattles type of magneto was not a desirable type. It was not operated by the movement of the engine, but by the pressure of the gases in the engine.

It had a piston which is shown in 19, Fig. 5 and also shown in Fig. 6, that was moved by the pressure of the gases in the cylinder. That is the compression raised the pressure within the cylinder and it moved this piston which was connected with the magneto roto so as to snap it around; and there was a tripping mechanism for determining the exact timing of the release, which included the cam and connecting rod arrangement shown in Fig. 1.

I do not think it is necessary to go into the details of that mechanism. As I said I do not regard it as a desirable type of magneto and it appears never to have been developed as a satisfactory commercial structure. But I refer to it simply as showing that the idea of making the magneto support and the ignition block a single unit, so that they could be taken out and replaced together was disclosed in this Wattles patent.

The Court: Did you ever see the Weber magneto?

The Witness: No, Your Honor, I never did.

But to illustrate this so that the Court may understand the construction of this Wattles magneto, I produce one which is somewhat different in its detail from that shown in the

Wattles patent in suit to which I have called attention.

906 I know nothing about this device except that it has the

Wattles plate on it, except that it has got the plunger, the piston, for operating the magneto, the pressure of the gases within the engine serving to turn the magneto and to separate the electrodes at the proper point.

Now, in this particular device, the ignition block instead of being screwed in is bolted on, and that is the way that is more ordinarily followed in stationary engines. There are some attachments on this magneto; this particular spring attachment at the end, for determining the time is different from the patent to which I have called attention, I simply show it as illustrating the general type of device shown in that Wattles patent.

The Court: The gas operates on this piston here?

The Witness: Yes, the gases operating on that would move the rotor and separate the electrodes.

I may be able to operate this thing. Your Honor will observe that I produced a spark with this Wattles magneto by reaching in with a pencil, and moving the piston by hand. It would, however, be impossible with this particular device shown in the earlier Wattles patent to push the piston that way because the connection between the interior of the cylinder through which the pressure was admitted was not a straight hole in this device; and if this Wattles magneto of No. 909,264 were operated in that way to produce the spark it would have to be worked with the thumb somewhat as I worked that Weber device when taken off the frame on which it is mounted.

As I say the Wattles model simply shows in a general way the character of the device which was shown in this earlier Wattles patent.

907 Now, with regard to the claims of the Kane patent in suit—

Mr. Mason: Just before you leave that I would like to ask if that last Wattles is not substantially like this Wattles patent 990,935?

The Court: The Wattles Model?

Mr. Mason: The Wattles Model.

The Witness: The Wattles model is like 990,935 of May 2, 1911.

Now, with regard to the claims of the Kane patent in suit, claims 2 and 3 are very specific, but in the main read accurately on the old Milton structure, with the exception of the fact that the old Milton structure did not show the yoke as adapted to engage the push finger directly; that is to say there was a separation in the old Milton magneto between the push finger which is the operating part or arm of the electrode and the yoke of the magneto.

This is shown by Exhibits 11 and 11-A.

Now, the difference between claims 2 and 3, except as to the matter of detail which I shall refer to directly, is particularly that the yoke in the new device directly contacts with the so-called push finger of the moveable electrode, the crank arm referred to in another place, this crank arm (indicating) instead of operating it through a long connection.

Claims 7 and 8 are claims which practically leave out all of the structural details which are contained in Fig. 2—

The Court: Claim ?

The Witness: Claims 2 and 3, and set forth broadly 908 the mounting of the magneto as a whole on the integral support as a rigid unitary structure.

The comparison with the prior art, therefore,—first I should say that these claims 7 and 8 do bring in the fact that the spring, the heavy spring for operating the inductor, or rotor, is mounted on the unitary support with the rest of the magneto.

And that I think is the only distinction between claims 7 and 8 and the Weber patent, except as to this word “integrally”. And for the purpose of this particular comparison I do not see that it makes any difference whether you have an integral casting there or have the two parts rigidly secured together.

In other words the only real distinction between claims 7 and 8, if there is any real distinction, is with respect to the question whether the spring which operated the rotor is also mounted with the rest of the magneto on the unitary support.

And this difference, it seems to me, in view of the fact that it was already characteristic of the old Milton magneto, to mount the springs in just this manner, and characteristic of the Hennig patent that I have called attention to, his mag-

neto and that was old and had nothing to do with the question of unitary support and I should not regard this difference as material or substantial.

The specific structure detailed by claims 2 and 3 of course is not found in Weber. It is found as I pointed out in the old Milton structure, in the old Milton magneto, of the old Milton patent, in Plaintiff's Exhibit 11; but not in connection with the direct engagement of the moveable electrode arm by the hammer yoke on the rotor.

909 This, Your Honor, involves simply substitution, to bring in this feature, bodily substitution of the old Milton magneto for the Weber on the same yoke.

Your Honor will see from this Exhibit 11, Plaintiff's Exhibit 11, that this bracket which supports the magneto is a shelf which corresponds, I may say, to the Weber shelf 53, if this magneto here were unbolted, the proportions being proper, and bolted on to the Weber shelf—then we would have the complete structure so far as that is concerned, and there would need to be no other changes made whatever in order to have the complete operative structure with that substitution, of course the mechanical proportions being proper so as to permit the substitution.

Just so with regard to the Wattles patent, if the old Milton magneto were substituted for the Wattles magneto and operated just as the old Milton magnetoes were operated, but simply mounting it on a unitary bracket, why the device of the Kane patent in suit would then be produced.

These changes I might say I regard as simply matters of mechanical skill, and obviously possible.

Q In that old Wattles construction, shown in that patent 909,264, whatever relation there may be between the movement of the electrodes and the movement of the armature or rotor of the magneto, is that preserved when you take it off and put it on again?

A Yes, I should have pointed that out, that the taking of the device off the engine or of putting it back on does not disturb the relation between the armature rotor and the moveable electrode.

910 That is illustrated by the Wattles model. It would be the same with the old Wattles patent as with the new.

Q I call your attention to certain battery ignition devices in gasoline engines as shown in the following patents: Dick-

inson 754,283, dated March 8, 1904; Cooper, 773,062 dated October 25, 1904; and Olds, 635,506, dated October 24, 1899.

Will you compare these types briefly with the Kane patent in suit and its claims.

A These three patents show battery ignition devices. They do not of course have any magneto connected with them. They simply have mounted on the plug, and unitary with it, a support for the operating mechanism, by which the making and the breaking of the contacts to produce the spark is brought about.

In other words they are generally speaking just such devices as defendants' mechanism is when the magneto is unbolted from it and it is used as a battery device—perhaps it has not been explained to Your Honor—

The Court: No.

The Witness: With the defendant's construction one of its peculiarities in which it differs from the Kane patent in suit, and from the Podelsak patent, and from the plaintiff's structure, is that in the defendant's device the magneto might be unbolted and taken off and then a connection is made with the battery, and usually the kick coil is associated with the battery, the device will work then without any change whatever, that is without any change in the alternating connection, as a battery ignition device. If for instance the magneto gets out of order, or you went to recharge the magneto or make any repairs on it or anything of that kind, all you have to do is to take it off, hitch the battery on here (indicating) and then the device will work without any change whatever as a battery ignition device.

I do not know that it is worth while to go into the details of these three patents. They simply show different styles of battery ignition devices which correspond with plaintiff's exhibit, defendants' machine type A when the magneto is removed from it; and they show devices to which a magneto might be applied just as a magneto can be applied here. When I say here I mean to plaintiff's exhibit, defendants' machine.

Of course, there is nothing in these patents that refers to the magneto or states that there is any change of that kind contemplated.

But the analogy in respect to the ignition unit between what these patents of Cooper, Dickinson and Olds show, and the device of the Kane patent in suit, is brought out by this

plaintiff's Exhibit, defendants' machine Type A, without the magneto.

The Court: I don't understand how you did that with the battery in the absence of the push rod.

A The push rod is unchanged, Your Honor. All of that is unchanged.

The Court: Nothing changed there?

A Nothing changed except to take off the magneto and connect the wire for the battery.

I perhaps should have stated in this connection that in each of these devices of the Dickinson, Cooper and Olds patents that this question relates to, there is a push rod and the trip finger and all of the necessary mechanism, including the springs, just as there is in this plaintiff's exhibit defendants' type A machine, for having the spring tripping and a hammering apart of the contacts, at the right time to produce the spark to cause the explosion.

The Court: Why is battery ignition unsatisfactory in this type of engine for firing stationary engines?

A Simply because you have to keep constantly replacing your batteries.

The Court: It takes more current?

A I would not say it takes more current but you would have to buy more batteries.

The Court: You have to do that in any system.

A Yes, but that is just it. This magneto system makes the engine supply its own current and you have never to pay any attention to the question of whether your battery is working.

The Court: Of course I understand that.

The Witness: There are a great many engines working by battery.

The Court: Stationary engines?

The Witness: Probably many more than working the other way.

The Court: Those are generally storage batteries, dry batteries.

The Witness: Dry batteries.

Mr. Williams: I want to interpose this objection to this testimony relating to the scope or validity of the claims of the Kane patent on the ground that the testimony is inadmissible under the defense which is made as to the rights of

the defendants under that patent, because of some matters of contract relationship.

913 They have set up a defense which would, it seems to me, estop them to make any defense on the ground either of scope or validity.

The Court: It may be admitted subject to the objection.

Mr. Mason: Q Plaintiff's expert, Mr. Webster, has attempted to identify defendants' type A device with claim 3 of the patent in suit, and defendants' type B device with claims 2 and 3 of the patent in suit. Will you compare these types, the A and B devices, with these claims of the patent in suit and state your conclusion?

A I am unable to find in Defendants type A device the structure, combination, set forth in Claim 3 of the Kane patent in suit as contended by Mr. Webster, for the reason that the claim distinctly and definitely calls for its main actuating springs to be connected at one end with the field magnet frame, and for the reason that it definitely calls for the integral yoke member to be rigidly connected with the inductor, neither of which characteristics is true of Defendants' type A device.

Referring to the exhibits of the Kane structure, Plaintiff's Exhibit 11 and 47, it will be observed that the main actuating springs are, as these claims set forth, connected at one end with the field magnet frame, that is, with pins that extent out from the field magnet frame, and it will also be observed that the yoke member is rigid with the inductor. It is pinned right to the inductor shaft, so that the two move absolutely together as one rotating part.

914 Now, those are the definite requirements of the claim, and neither of them is, as I have said, responded to by Defendants' type A device.

On the contrary, in Defendants' type A device the magneto frame, the field magnet frame, is entirely separate and can be removed, and has been removed, from plaintiff's Exhibit of Defendants' type A machine, and yet both the heavy springs and the yoke remain.

I should have said that in moving the field magnet frame the whole of the magnet proper, including the inductor and its shaft, has been taken off.

Now, if this were done with the Kane device, that is if these parts, the inductor and the field magnet frame, were removed it would take away the entire device so far as any operative

structure is concerned, and it would destroy the device, and simply because of the character of structure which the claim specifies the defendant, by making its yoke an entirely separate part, disconnected in every way, except by a pin and slot operative connection, from the inductor, as distinguished from being rigid with it, as the claim requires, and my mounting the springs entirely separate from the magneto proper and from the field magnet frame, has provided a structure which remains operative and a perfect working device for battery ignition purposes when the magneto is taken off.

The distinctions which I have pointed out, therefore, are not merely formal distinctions or immaterial ones, but are distinctions which involve an entirely new function and mode of operation, and which have been set forth, I find, in a later patent issued to Van Deventer, No. 1,236,790, of August 14, 1917.

915 It may, furthermore, be pointed out in regard to this Defendants' Exhibit A, or this Plaintiff's Exhibit of Defendants' machine type A, that there is nothing in the nature of a cam between the—as an engaging surface between the yoke and the operating arm of the movable electrode.

With regard to that cam surface—it is called a curved cam surface in claim 2 and in the specification—the patent points out very elaborately, beginning at line 75, or 74, of page 2—no, that is the wrong place.

Mr. Mason: Line 105, I think, Mr. Carter, of that same page.

The Witness: Will you cut out the words “very elaborately,” please.

The patent points out, line 105 of claim—of page 2—

The Court: Make that just “simply describe” and not “elaborately”; not “very elaborately describe.”

The Witness: That the portion of member 30, which engages the bottom of the anvil 29, is preferably rounded or curved in order to effect uniform movement of the arm 27 during the time the member 30 is in contact with the anvil 29.

This has reference to the rounded end of the arm which is supposed to produce an easing of the engagement of the electrodes. I find nothing of that kind in the Defendants' device A.

The Court: There is just a flat surface there.

The Witness: Just a flat surface.

Now, with regard to the type B machine, the same con-

clusions which I have expressed with regard to the type A 916 machine apply, except that there is apparently in this machine a contact surface which might be regarded or might be described as a curved cam surface, so that as to that distinction I would not come to the same conclusion; that is to say, that perhaps would not distinguish Defendants' type B structure from claims—from either claims 2 or 3.

So far as the feature of the magnets not being fastened to the frame of the magnet, but being fastened to the ignition block direct—I mean of the springs—not the magnets—the springs being fastened to the ignition block direct instead of the frame of the magneto, and so far as the matter of there being no rigid connection between the inductor or the inductor shaft and the yoke is concerned, what I have said as to type 1—of type A applies equally to type B and in these respects type B is distinguished definitely and materially both from claims 2 and 3.

The Court: Q Now, won't you explain a little more fully about the different mode of operation.

A When I said—what I said with regard to a different mode of operation, your Honor, referred to the capacity of this to operate as a battery ignition device—

The Court: Oh, yes.

The Witness: Entirely—

The Court: Yes.

The Witness: —when the magneto is entirely removed, and a capacity for operation which isn't present in the Kane—

The Court: Q You mean with the magneto the operation is substantially the same.

A So far as the production of the spark is concerned—

Q Yes.

A I think it is; but I do not think the structure is there.

917 Mr. Mason: Q. The application of the Kane patent in suit is described as a division of an earlier application, filed by Kane, February 2, 1910, which eventuated as the Kane patent No. 1,204,573, dated November 14, 1916. Will you examine this Kane patent 1,204,573, and state whether you find that it illustrates or describes the curved cam surface thus pointed out with particularity in the Kane patent in suit?

A The Kane patent No. 1,204,573, of November 14, 1916, makes no reference to a curved cam surface, or to any kind of a cam surface, or to any particular kind of a surface.

The Court: Q Although the figure is just the same as it is in the earlier patent, apparently.

A No, Your Honor. The second patent has an additional figure added in order to show that so-called curved cam surface.

Q Yes.

A This being Fig. 3. The Fig. 2 of the later filed Kane patent is very similar to Figure 3 of the original Kane patent, but it doesn't show the curved cam surface, and there would be no showing of it were it not for Fig. 3 which has been added to the original case.

The reason for this is that the view of Fig. 3 of the earlier filed Kane patent simply gives us the end view of these spools to which the ends of the spring are attached, and they conceal the nature of the arm back of it.

In Fig. 2 the nature of the arm, this being a top view, is concealed by the projecting end of the electrode arm 27, so that this arm may be a perfectly flat surface for all that appears in this disclosure of the earlier filed Kane patent. There is nothing one way or the other in the patent on that point, and the patent simply states—I am referring to the earlier filed Kane patent—the specification simply states with 918 regard to this part of the construction that “the end of the crank arm 27 on the movable electrode 26 is provided with an adjustable screw 29, provided with a lock nut and having a head at its lower extremity for engagement with the oscillating member 30 which is secured to rotate with the oscillating shaft 16 carrying the armature or inductor 17.”

I think that is the only reference in the entire specification to that particular part.

Mr. Mason: Q Will you state briefly just what that early Kane patent 1,204,573 relates to; what is claimed there?

A This relates to a governor controlled device for throwing the magneto out of operation when the speed of the engine exceeds a certain predetermined limit. When that happens the governor pushes out certain mechanism which lifts the push rods, and the magneto stops operating until the engine slows down again and requires further sparking.

Q Will you please compare the mechanism shown and described in the United States Milton patent 1,096,048, dated May 12, 1914, and also the British patent to Milton 24,838, of 1909, with each other and with the Kane patent in suit, both generally and particularly with respect to the illustra-

tion and description of the curved cam surface and its function.

A The two Milton patents, that is, the Milton British patent and the United States patent to Milton No. 1,096048 are identical as to their disclosure of the mechanism.

The Court: Q As to their drawing?

A And as to their drawings. I think it is evident that the drawings of the American application were substantially copied from the British application.

919 The Kane patent in suit discloses substantially this same mechanism that it set forth in the two Milton patents, and with regard to this curved cam surface in particular I find that the Milton patents both illustrate—both of them illustrate and describe this curved cam surface.

Fig. 3 of the Kane patent in suit, which I have already pointed out was not in the original Kane patent, appears to be substantially copied from Fig. 4, of the Milton patent. It is an identical illustration so far as this curved cam surface feature is concerned.

Mr. Mason: Q I hand you Plaintiff's Exhibits No. 17 and No. 18, and ask you if you will please examine these and state whether you find shown in either of these drawings this curved cam surface which we have just been referring to (handing document to witness.)

A The drawing on tracing paper marked Plaintiff's Exhibit 17, does not show any curved cam surface. This drawing is very vague as to this feature, or as to the feature of the exact construction of these related parts, but as near as I can determine from the view at the upper left hand corner of the sheet the hammer portion or engaging portion of the yoke, which includes the trip finger, is simply a flat surface to which the set screw comes in contact, the set screw apparently being in the arm of the movable electrode. This drawing on tracing paper, Exhibit 17, is a very incomplete drawing. It doesn't show any complete mechanism at all. The drawing on brown paper, Plaintiff's Exhibit 18, is like the original Kane patent in that the views are so taken that it is impossible to tell what the formation of the engaging surface of the yoke at the point where the set screw strikes it is.

920 The view at the right hand side of the sheet is a front view and looking at the springs and the spools or washers on the ends of the springs which engage the—or where these

springs are fastened to the arms 4 of the yoke, and these spools conceal the shape of the arm back of it, the spools being larger in diameter than the width vertically of the radial arms of the yoke.

The Court: I do not understand that in view of 4 there and 4 and 8/

The Witness: If your Honor will look at the—I think I can explain it. If your Honor will look at the view at the left hand side of the sheet, which is a view looking down, your Honor will see that the springs 6 are hooked around spools that are not numbered on the ends of the arms 4. Now, the figure at the right hand side of the sheet is a figure looking at the view at the left arm from the bottom of the sheet, as though it was viewed from the bottom of the sheet, and the ends of the arms, which are marked 4 in this view at the right-hand side of the sheets, are the ends which stick through the spools and which I am now indicating on the view at the left hand side of the sheet. This, I think, is precisely the same as in the two Kane patents, leaving out or disregarding Fig. 3, which was added to the later Kane patent.

The Court: Yes.

The Witness: This, for instance, is exactly like figure 3 of the original Kane patent. Your Honor will see that Fig. 2 of this original Kane patent is a practical copy of the view at the left hand side of the brown paper drawing, and that Fig 3 is a copy practically of the view at the right-hand end of the brown paper drawing, and your Honor will see this Fig. 3 has the set screws—I mean the cotter pins on the outside of the spools—shown clearly, thus indicating that we 921 are looking at the ends of the yoke arms where they stick through the spools.

Consequently, the spools themselves conceal and disguise the exact character of the engaging surface which is behind them, and it is for this reason that the third figure was added to the drawing in the patent in suit. There is no other purpose for this figure in the patent in suit than to illustrate the curved cam surface which was not originally illustrated and was not in the original patent."

The file wrapper and contents of the Kane patent in suit were offered in evidence by defendants' counsel. The examination of the witness Carter and was suspended and

HENRY G. COX called as a witness on behalf of the corporate defendants, testified as follows:

Direct Examination by Mr. Mason.

Age 45 years, residence 6729 Cylde Avenue (Chicago); magneto superintendent for the International Harvester Company. Before going with International Harvester Company witness was secretary of the Accurate Engineering Company which manufactured magneto ignition devices—low tension magnetos, in both rotary and oscillating types. It made a low tension oscillator that was not mounted on a plug—was a separate magneto, mounted independently of the plug. The magneto had a T-shaped bar on the armature shaft, which was connected to the movable electrode by a bar, so that when it oscillated the movable electrode on the igniter would oscillate. Witness produced a direction sheet of the Harvester Company, and name plate bands that went over the magnetos. The direction sheet showed the mounting of a magneto on a side shaft engine, looking at the end of the engine, and in that end is mounted the igniter, and over to one side the magneto, and the two are connected with a bar, shown on the direction sheet. Referring to the direction sheet, the witness further said:

“This is when the magneto is at rest (indicating) and here is when the tripping mechanism has pushed it over to one side, ready to let it go. In that case that bar had a head on it, and when it swung back the head would strike the magneto part, and separate the igniter point. When the movable bar swung back the head on the bar struck the movable electrode and separated the igniter contacts in the engine, making the spark. The same means we also showed here (indicating) on a part of the magneto, a band that went over the magnets, to hold them in place.”

Witness stated that the little booklet to which he had been referring was marked “Directions, International Harvester Corporation”, and that the cuts on page 6 show accurately what it was manufacturing. The booklet was offered in evidence as Defendants’ Exhibit 51. Witness further testified:

Q. “How long were you manufacturing ignition devices of this character?

A. Thirteen years.

Q. Name some of your customers, your large customers, in connection with this type of ignition devices? I mean before you went with the International Harvester?

A Fuller & Johnson; Acme Engine; Associated Manufacturers. Those are the largest.

Q Well, did you sell to the International Harvester?

A Oh, yes, but I thought you said except the International Harvester.

Q About how long has the International Harvester been using this device which you referred to in your testimony?

A Since early in 1914.

923 Q Do you know whether you are using it at the present time?

A Yes, sir.

Q Is the International Harvester using anything else in the way of a low tension oscillating magneto at the present time?

A Not as regular equipment for new engines, but purchasing repairs for those they have used in the past.

Q Are you familiar with what is usually referred to as unitary bracket structure?

A Yes, sir.

Q In connection with the oscillating magneto ignition?

A Yes.

Q Well, are they using any of that kind at present?

A Only as repairs.

Q That is all. Well, do you know when they stopped using that type of magneto, mounted on the unitary bracket,—approximately?

A About, late in 1914, I think.

Cross-Examination by Mr. Williams.

Witness stated he had been engaged in the manufacture of magneto ignition equipment for thirteen years, beginning it in 1903 as his own business which was later combined with that of another man (Robert C. Danly) in Chicago, and they then took the name of Accurate Engineering Company, in 1914. The Accurate Engineering Company was a corporation organized under the laws of Illinois. Mr. Ed Johson was interested in the company at the time it was organized in 1914. He was superintendent of the Tractor Works of the International Harvester Company. The latter company be-

gan to use the equipment furnished by the Accurate Engineering Company about May, 1914 on what they called 924 their side-shaft line, built by or under Johnson's direction at the Tractor Works. The International Harvester Company began to purchase the Accurate Engineering Company's equipment for use only on the lines which Mr. Johnson was engaged in building. That was the new line; the Milwaukee line was disappearing. Defendant's Exhibit 51 illustrates the style of magneto equipment which the Accurate Engineering Company first sold to the Harvester Company. The Direction Booklet, Defendant's Exhibit 51 was published April, 1915, but the Harvester Company was using the magneto equipment before that. The style of equipment shown in Defendant's Exhibit No. 51 was also used by the International Harvester Company on its so-called 816 Mogul Tractor Engine, which witness stated was a disappearing type of tractor and practically obsolete, although the Harvester Company is still making it. It had a lot of trouble with the ignition on the tractor engine at one time. Witness stated that in addition to the 816 Mogul Tractor Engine, and the side-shaft International Harvester Engine, the Harvester Company used equipment identical with that shown in Defendants' Exhibit No. 51 on a new type of engine made in Milwaukee, which the company was just bringing out at the time the witness testified. The first size of the engine was brought out nearly a year before, as the smallest size built, and the other engines, larger sizes, were still coming out, at the time witness testified, the last one just completed—the designs and tools just completed, and a few of the engines coming out on the market and being delivered. In addition to the type of low tension magneto equipment previously described by the witness, the International Harvester Company was using at the time he testified rotating styles of magnetos in large quantities, on one-and-one-half and three horsepower Type M, the new line in Milwaukee, and on three sizes of the old line of the Tractor Works. The

925 Milwaukee line is a cheap engine, the cheapest the International Company makes. The International Harvester Company discontinued the use of the magneto equipment with a unitary mounting for the magneto and electrode, except for repairs, in the latter part of 1914, and since that time it has not used on new engines the unitary type of magneto equipment, according to witness' understanding. If

the International Company equipped between eight and nine thousand new engines with the Webster Electric Company's unitary ignition equipment in the year 1917, witness did not know that fact. He was not connected with the company at that time. The Company did not, to his knowledge, buy several thousand of that same unitary construction from the Webster Company in the year 1918 for new engines, but witness was not in a position to know whether they did or not—and the same with respect to the year 1916, and also the year 1915. The International Company did use the Webster Electric Company's equipment on new engines, to the knowledge of the witness, until some time in the year 1914, many thousands of them. Johnson did not organize the Accurate Engineering Company, but came into it later, and when witness came into it they then became to furnish the magnetos for the Harvester Company. Before witness became connected with it they had no electrical business. Mr. Danly came from the tool room of the International Harvester Company, and he and Johnson were associated in the Accurate Engineering business before witness became connected with it, but they had no electrical end to the business and did not make magnetos. Witness was the magneto man that came in, and then they manufactured magnetos, and their first customer was the Harvester Company, and they sold to the other customers named, Fuller & Johnson, and Acme Engine Company, and Associated Manufacturers, after witness went with the Accurate Engineering Company, and continued to supply them until the Accurate Engineering Company sold its plant to 926 the Harvester Company. It had an order for five thousand equipments from the Associated Manufacturers but did not fill it all—probably filled about 500, and the same number to the Acme Engine Company, which failed and went out of business. About two thousand were sold and delivered to Fuller & Johnson. The latter were rotating magnetos. Some oscillating magnetos were supplied to Fuller & Johnson, but not of a unitary construction, nor of the construction shown in Defendants' Exhibit No. 51. Witness was shown and identified the catalogue of the Accurate Engineering Company, but could not state when it was published. Thought it was about 1915, but would not be sure of the date. Witness thought Accurate Engineering Company first manufactured a machine like that shown in the cut on page 2 of the catalogue in 1915. It purchased the Weber patent No. 820,535,

but witness did not give date of purchase. It was before the Accurate Engineering Company began the manufacture of the machine shown on page 2 of the catalogue.

The catalogue of the Accurate Engineering Company identified by the witness, was offered in evidence by plaintiff's counsel as Plaintiff's Exhibit No. 70.

The construction shown on page 2 of the catalogue Exhibit No. 70 is one in which there is a plug which extends into the engine cylinder; the plug has a flange; then there is a shelf member having a horizontal part, on which the magneto is mounted, and a vertical flange which runs up alongside the flange of the plug; then there are bolts or studs, two of them, at diametrically opposite sides of the plug member, and extending through the flange of the plug, and the vertical flange of the shelf member; and those bolts when tightened up, would hold the vertical flange of the shelf to the plug, and thus hold the parts together, while they were in operation on the engine. There is an electrode coming through from the plug member to the outer face of the vertical flange of the shelf member. It projected through a hole, 927 having some clearance, in the vertical shelf of the plug member. When the bolts were removed, that is, the two that held the equipment to the engine—the vertical flange of the shelf member would not slip off from the electrode binding post, as suggested by plaintiff's counsel. The part of it going into the engine was of cast iron, and the shelf was of steel, and the two were riveted together. The driving spring member in this equipment, as made by the Accurate Engineering Company, and as shown on page 2 of the catalogue, was mounted on the horizontal shelf of the shelf member, which carried the magneto. The Accurate Engineering Company never manufactured equipment such as shown on page 2 of the catalogue Exhibit No. 70 except experimental machines. They were put on engines and operated and were satisfactory, and were offered for sale. Witness never took any orders for them. Witness identified the description accompanying the cut on page 2 of catalogue Exhibit No. 70, which plaintiff's counsel read into the record. Witness was familiar at the time the booklet Exhibit No. 70 was gotten out, with the equipment then being manufactured and sold by the Webster Electric Company, witness was the man who got up the design for the Accurate Engineering Company. Witness identified another pamphlet shown him as a catalogue of the Ac-

curate Engineering Company showing another design, which was gotten out later. The design in Exhibit No. 70 was the conventional type of spring drive; the other was a new type of spring drive. The two booklets were identical, excepting that in the later one a new page was pasted over page 2 of the one marked Plaintiff's Exhibit No. 70. The booklet last identified by the witness was offered in evidence as Plaintiff's Exhibit No. 71. Witness did not remember delivering the booklet Plaintiff's Exhibit No. 71 to Mr. Walter Brown, of the

Webster Electric Company, on June 27, 1916, at the convention of the National Gas Engine Association, at the

Hotel Sherman, in Chicago, nor remember having had any conversation with Mr. Brown at that time about the fact of the new machine shown on the pasted in page, taking the place of the one shown on page 2 of Exhibit No. 71. Witness did not remember when the booklets like Plaintiff's Exhibit No. 71 were first distributed. A machine like that shown on the inserted page 2 of Plaintiff's Exhibit No. 71 was first gotten out in 1916. Witness could not state just when. Witness did not recall having met Mr. Brown at the convention at the Hotel Sherman on June 27, 1916, but stated that he had met Mr. Brown at all of the conventions.

Witness did not recall having told Mr. Brown that the machine shown on page 2 of Plaintiff's Exhibit No. 70 was no good, or that it proved to be unsatisfactory, or anything of that sort; but did recall having explained to Mr. Brown that the machine shown on the inserted page of Plaintiff's Exhibit No. 71 was substituted for the one shown on the original page 2 of Plaintiff's Exhibit No. 70 because the latter magneto was original, and they could not sell it, while the one shown in Plaintiff's Exhibit No. 71 was conventional and would sell. Witness did not recall that at the convention at the Hotel Sherman witness picked up a booklet like Plaintiff's Exhibit No. 71, from underneath some apparatus, and handed it to Mr. Brown, and that the latter, in opening it and attempting to run through it, said something about there being a page stuck down. The inserted page 2 of Plaintiff's Exhibit No. 71 was pasted over the original page 2 of the earlier catalogue like Plaintiff's Exhibit No. 70 and then distributed. The machine shown on this inserted page of Plaintiff's Exhibit 71 was not the machine described by the witness during his direct examination. The latter, with the T-shaped member, is shown on the right-hand page. The Accurate

Engineering Company sold machines like the one 929 shown on page 2 of Plaintiff's Exhibit No. 71 to Montgomery Ward & Company but to no one else. They had an order for a thousand which witness thought was filled. In the machine shown on the inserted page 2 of Plaintiff's Exhibit No. 71 the entire equipment, including magneto, and operating springs, was mounted and carried as a part of the plug member. The Accurate Engineering Company was bought out and taken over by the Harvester Company in April, 1917. Witness could not state how long before that date it was that the machine shown on the inserted page of Plaintiff's Exhibit No. 71 was gotten out. Witness went with the Accurate Engineering Company in March, 1914. At that time it had not gotten out the machine shown on page 2 of Plaintiff's Exhibit No. 70. The Weber patent was bought in the summer of 1915, and then the machine shown on page 2 of Plaintiff's Exhibit No. 70 was made, and some time later than that, the machine shown on the inserted page 2 of Plaintiff's Exhibit No. 71 was made, and that machine was intended to take the place of the one shown on the original page 2 of Plaintiff's Exhibit 70. In the catalogue, Exhibit 71, the new page 2 was pasted over page 2 of the older catalogue because they could not sell the design shown in the older catalogue. The Harvester Company took over the magneto business of the Accurate Engineering Company, and acquired the Weber patent. It never made for use on its own engines an equipment such as that shown on page 2 of Plaintiff's Exhibit No. 70. Witness was operating the magneto manufacturing department of the Harvester Company at the time he testified, but had never used "the good thing shown on page 2 of Plaintiff's Exhibit 70 on the Harvester Company's engines," nor the equipment shown on the substituted page of Plaintiff's Exhibit No. 71. Witness had talked with Mr. Lord, head of the Patent Department of the International Harvester Company, since witness became connected with the company.

930 On re-examination, witness stated that between forty and fifty thousand of the devices of the type shown on page 6 of Defendants' Exhibit 51 had been used by the International Harvester Company up to the date of his testimony.

On re-cross-examination witness stated that the reason why the Harvester Company equipped its engines with the ap-

paratus shown in Defendants' Exhibit No. 51, instead of with a unitary construction, was that Mr. Johnson thought it would be easier to remove the igniter plug, for cleaning and inspection, to have it separate from the magneto, he thought he could get a better advance and retard control, and Mr. Johnson thought that had proved to be the case. Witness was not a gas engineer and could express no opinion personally, but was an ignition engineer, and thought Mr. Johnson was right. It was not a fact that the Harvester Company had a lot of trouble and a lot of complaints about the machine shown in Defendant's Exhibit No. 51. Such complaints would come to the witness. Witness would prefer to use the equipment of Defendant's Exhibit No. 51, rather than the unitary equipment, with the International Harvester type of engine, because the driving mechanism is at one side, and a considerable distance from the igniter plug, the latter being in the head. It is not as easy to drive it as it would be on a side-shaft engine, push rod type. It was the matter of getting the push rod to the magneto that made witness think the type shown in Exhibit No. 51 preferable for that particular style of engine. In the machine shown on page 2 of Plaintiff's Exhibit 70, it is a gasket or washer of asbestos or similar material that makes the joint tight between the plug and the cylinder. The gasket had two holes for the bolts to go through, and a corrugated inner surface on the flange, and the bolts would draw the gasket up against the flange, on either side of the center. If only one bolt were used, a bolt on one side, the gasket would probably be blown out.

931 Defendants' counsel offered in evidence the illustrated apparatus produced by Mr. Carter in connection with the Weber patent, No. 820535, and it was marked Defendants' Weber Illustrative Apparatus No. 52; also the Wattles model, produced by Mr. Carter, which was marked Defendants' Exhibit Wattles Magneto No. 53.

HENRY W. CARTER resumed the stand on behalf of the corporate defendants, and further testified as follows:

Cross-Examination by Mr. Williams.

In Plaintiff's Exhibit Defendants' Type A Apparatus the striker arm of the yoke member necessarily slides upon the engaging end of the electrode arm, since the centers are not aligned. In low tension battery ignition, involving a battery and a spark coil connected in circuit with the electrodes within the engine cylinder, the spark coil is an induction coil. Witness stated that he did not know just how it was made, or how many windings it had, or the size of the wire which is for the purpose of getting more voltage or spark. Any induction coil is necessarily made of two kinds of wire, coarse wire and fine wire, and that is what is used with battery ignition according to the understanding of the witness. Where an induction coil is used to raise the voltage the battery would be connected with the coarse winding and the fine winding would be connected with the electrodes. Asked what makes the current in the fine wire winding, witness said:

"Well, now, I had not stopped to consider that proposition when I testified as I did. I do not even know that there is a kick coil used in that connection; just now I cannot see just how the kick coil could be used. I do not know that it is a matter of any importance, so far as the proposition of 932 how these devices that we were talking about worked.

It is only a question of the source of current. I cannot answer the question."

Q In those prior art patents that you refer to, the Cooper and Olds and Dickinson, what circuit do you understand was employed in connection with the battery?

A I don't think either of these patents particularly designate what kind of a circuit. It should be certainly a circuit as will form a sufficient current to make the spark when the electrode is broken suddenly.

Q In view of the fact that the patents do not disclose the source of current or nature of the circuit, will you describe the circuit arrangement which you understand was to have been employed in connection with this apparatus as understood by one skilled in the art?

A An ordinary battery of sufficient capacity, one circuit

of which was connected to the insulated electrode, which is ordinarily the non-movable electrode, the stationary electrode, and the other terminal of which is connected to the movable electrode or to ground, as it would be anywhere on the engine, would be a satisfactory or proper arrangement for this connection.

Q What voltage of battery would ordinarily be employed in a system of that kind?

A About six I should say.

Q Six volts?

A Yes, five or six volts.

Q And you would connect one terminal of the battery, as I understand, with one of the electrodes and the other terminal with the other electrode?

A Yes.

Q And that would be the circuit arrangement?

A Yes.

933 The Court: Q Without any coil between?

A Without any coil between.

Mr. Williams: Q And that would produce a spark, would it?

A I think so, yes.

Q So if we were to get a six volt battery and connect it with the fixed and the movable electrodes of this Plaintiff's Exhibit Defendants' Machine Type A and connect the terminals with the two electrodes and then operate the mechanism to separate the electrodes, we would get a spark between the terminals?

A Ought to, I should say.

Q And that would be without any induction coil or any other coil?

A Yes.

Q And that is the way you understand that the apparatus is intended to be used?

The Court: With a battery.

Mr. Williams: Q With a battery.

A That is the way it could be used with a battery. Now. I never paid any attention to the question how the kick coil was used in that connection. I do not see for these purposes there is any reason for inquiring. I think a kick coil is sometimes used, but I cannot tell just how it is used. I don't know.

Q Now when you speak of a kick coil you are talking

about this coil you describe as having the coarse and the fine winding?

A Yes.

Q When that kind of a coil is used with the coarse and the fine windings what is it that causes the production of a current in the fine wire winding?

A Generally speaking, it is done with a vibrator.

Q On the end of the coil?

A In the coil or in connection with the coil.

Q And what is the function of that vibrator?

934 A That vibrator is to keep a rapid play of make-and-break passing through the—keep a rapid play of current, a make-and-break of the current, of the battery current, passing through the primary coil, so that the induction coil or the secondary coil will receive a stepped up voltage that is due to the rapid making and breaking of the current. An induction coil consisting of windings, of coarse and fine windings necessarily, depends for its inductive action on the fact that there are current changes going on in the primary coil. A constant current field primary coil will not produce a current in the secondary coil.

Q This current that is produced in the secondary or fine wire coil of this induction coil, that is a high tension current, is it not, a high tension alternating current?

A Yes.

Q And that is the current which, as I understand you, is used in connection with this make-and-break igniter mechanism such as illustrated in the Dickinson, Cooper and Olds patents.

A No, I did not say so.

Q That is used, then, in connection with what?

A I didn't say that either.

Q How?

A I said a while ago that their kick coils were used for, as I understand that, in connection with these devices, but that I could not tell you just how they were used; and what I was describing was, simply, you were asking as to, generally speaking, how these coils worked. But as to whether they are used in this connection or not, I cannot tell you, I do not know.

Q You do not think they are used, however?

A I cannot tell you that. There must be a sufficient source of current, in connection with any of these battery

ignition devices— A battery ignition device itself has nothing to do with the source of current, or is not changed or altered or varied by the source of current.

935 Q And that regardless of whether it is battery or Magneto?

A It might be a battery, and it might be a generator. It might be a magneto generator, or it might be what you call an electric generator, the only difference between the two being as I understand it, in one case you have a wound field, and, the other, fields that are in the nature of permanent magnets.

Q Do you mean that that is the difference between the electric generator and the magneto?

A I think so, yes, sir.

Q Where, in the so-called electric generator, as you say where, instead of the permanent magnets, there are wound fields,—what is it that supplies the current to energize the field windings? Where does that current come from?

A Why, ordinarily from a magnet; it may be a shunt wound dynamo, or it may be a series wound dynamo, or there may be an energizing dynamo, separate, for energizing the fields.

Q If you were to take, say, this Defendants' Type B. apparatus, as you have it in your hand, and take the temper out of the permanent magnets, or otherwise substitute a soft iron or steel magnet, and then wind a coil of wire around that magnet, field magnet winding, then you would have an electric generator, would you?

A If you supply that coil with current, certainly.

Q If you do?

A Yes.

Q Now, where would that coil be supplied with current, or what would supply it with a current?

A It might be supplied with a current from the armature which is rotating in that field, or it might be supplied with a current from some separate source. That separate source generally is only in connection with very large generators, that are what we call separately excited.

936 Q Now, do you mean that you could substitute that coil, wound field magnet, in this Defendants' Type B. apparatus, and connect that—

A An oscillating device?

Q And connect that with the armature, in an oscillating

device, in such a way that your field would be energized, to serve any useful purpose?

A I should say not, no. We were talking about magnetos, as I understood it, for furnishing a constant current for ignition purposes, in connection with such a system as the Cooper and Olds patents, that we referred to.

Q Now, coming to an oscillating magneto, won't you describe just what it is that produces the current which flows between the electrodes, at the proper time?

A I never investigated that question very closely. I have accepted the fact that when an armature is rotated within a field of a magneto, that there are certain changes of position at which the current is particularly generous, that is, the lines of force, the magnetic lines of force which pass through the poles of the magneto, and the armature, are—the current is caused by the variation in those lines of force, and as the armature swings between the poles, there are certain positions at which the change or variation in those lines of force is at the maximum, and that is where the current generation is noticeable. Now, as to just exactly the position in that regard, I have not investigated, and I would not undertake to say.

Q Now, you say that the change in the magnetic flux is the thing that induces the flow of current; is that correct?

A I think so, yes.

Q Now, the magnetic flux through what? What part of the magnetic flux is it, or the change of what function of the flux is it?

937 A When the armature is in a position, we will say, extending directly between the poles of the magnets, it furnishes a direct path for the magnetic flux between those poles. Now, when the position of the armature is changed, is shifted, so that the flux can no longer pass, we will say, directly by that path, it must shift to a path through other poles, or through other arms of the armature, why, there is a change of flux which brings about the generation of the current.

Q Let me ask you a little more in detail about that. Supposing taking this tripolar type of machine, the rotor is in a position such that two of the arms are directly in line with coils; do I understand you that under that condition the magnetic flux threads through the coils, passes largely or entirely through the coils?

A The magnetic flux,—if you mean through the wire coil,—the magnetic flux never passes through the wire coil.

Q Well, then tell us where the flux is.

A The flux is through the poles of the magnet on which the coils are wound.

Q That is, these poles, the center poles of the tripolar piece, do you mean (indicating)?

A Well, now, when you take that tripolar form of magnet, you are getting into a complication of considerations, as to just exactly the effect of those polar arrangements, multiple-polar arrangements, which I would not undertake to say anything about, because I have not paid any attention to that subject, at all. There are certain Podlesak patents in suit that I notice have to do with that particular thing, but I have not examined them particularly, because I could not see that they had any bearing whatever upon any of the comparison which I have been called upon to make; and the question of whether there is a tripolar magneto there, or a bi-polar magneto, does not alter in the least the fact that there

are certain movements of the armature which result in just the kind of a current flux which Mr. Webster described in connection with his oscillograph diagrams, in which he shows just what happened,—I mean, just what would happen there as to the generation of the current, in a wave, which has a very sharp peak; now, as to just exactly how that current is generated, that is, how, exactly, the magnetic flux operates in generating that current, as I say is something that I have not paid any attention to, and I cannot answer with regard to it.

Q. What is the form or style of low tension magneto with which you are most familiar?

A If you are considering the question of how the current is generated in a magneto, of exactly how the magneto works to generate this current, I am not particularly familiar with any form. I simply never have given that matter any consideration; there is no reason why I should; there is no comparison in this case which is in the slightest degree affected by the exact character of the magneto employed, or the question of how the flux operates to produce the current.

Q Now, can you tell us how in any kind of magneto the current is generated, that is, what it is that causes the current to be generated, whether tripolar or bi-polar, or any form at all?

A An electric current is generated only in one way, as I understand it, and that is by changing the number of lines of force that are threading their way through a loop of wire. Now then, the question of how a current is generated in a given kind of a magneto depends on the character of the magneto. In the defendants' type of magneto, which has a wound armature, you have loops of wire which are being rotated or oscillated back and forth within a magnetic field, which may be considered as existing between the poles of the magnets. Now, then, as those loops of wire are turned, the number of lines of force which thread through them are varied, and the generation of the current is brought
939 about by that fact. Now then, if you take the kind of magneto which you have here (indicating) that is, referring to the Milton magneto, either the old Milton, or the Milton magneto of the Kane and later Milton patents, we have essentially the same situation, except that the coils of wire in this case are mounted on the poles of the magneto, and the armature simply forms a path for the magnetic flux. Now then, the flux,—the number of lines of force of the magnetic flux which are threaded through those coils will be varied in this case accordingly as the armature forms a direct path between these poles, between the poles on which the coils are wound, or is diverted to other poles, or is swung to a position where it does not form such a direct or complete path; and in that way the lines of force are being varied through the coils,—a current is generating in the coils. Now, that in general is the theory of the production of electric current either in a magneto or in a generator; and, aside from that general statement of it, I have paid no attention to the exact manner in which any of these magnetos bring about the generation of their current.

Q Now, as the rotating part of any of these forms of magneto, bi-polar or tri-polar, or what you please, as the rotating part turns, when and where is it in the rotation that the peak of the wave, the peak of the current wave is generated?

A With a bi-polar arrangement, I understand that the peak of the current wave is generated just as the ends of the armature leave the poles,—just as the path, I might say the direct path, direct metallic path for the magnetic flux, is cut off; but in this tri polar form of armature I would not undertake to say just where,—I have not investigated that,—just where the peak of the current occurs.

Q Will you look at this Plaintiff's Exhibit 49, diagrammatically illustrating Defendant's Device Type A, and state whether that shows the armature in the position at which you conceive the peak of the wave to be generated, assuming that the rotation is in a clock-wise direction as you view the picture?

(Plaintiff's Exhibit 49 shown witness.)

A Substantially so, I should say. It will be noted here that the head, if I may so describe it, of the armature, has just left the pole piece with which it was just previously engaged, so to speak; of course it was not in actual contact with it, but in very close rotative relation to it; it is at that moment, as I understand it, that the peak of the wave occurs; but I have never personally investigated that phenomenon, and I simply am stating what I have been informed in that direction. The essential fact, of course, is simply this,—that in a given rotation of the armature there will be a wave of current produced and necessarily that wave of current must have some definite peak, or high point.

Q And that definite peak or high point has a fixed relationship, as I understand you now, to a given angular position of the rotating member; is that correct?

A Yes, sir.

Q Now, Mr. Carter is it your understanding that that is true regardless of the speed at which the rotating member is rotated, that is, that the peak of the wave occurs at a fixed given angular position, and regardless of the speed at which the moving part is rotated?

A I cannot answer that question.

Q How?

A Whether that is varied by the speed at which the part is rotating, or not, I do not know.

Q Now, let me call your attention to the magneto which you used as a part of Defendants' Exhibit 52, illustrative, as you said, of the Wehr apparatus; and let me ask you particularly how the speed at which you turned the rotor, at the time you demonstrated a spark production, with the magneto removed from its driving spring, compared with the speed at which that rotor moves when actuated by the spring.

A Why, I should say that when actuated by the spring, it moves very much more rapidly.

Q That it does when—

A That I could move it with my fingers.

Q Now, when the spring moves it, as you say, very much more rapidly than you are able to move it with your fingers, does the peak of the wave occur at the same position as it will occur when you do move it with your fingers?

A I cannot tell you that.

Q Did I correctly understand you during your direct testimony to say that the unitary structure, as I think you designated it, failed to secure all of the advantages ascribed to it by Mr. Webster in his testimony?

A I do not think that I made any assumption as to all of the advantage, or as to what advantages, except as a certain question asked me, as I recollect it, was posutlated on the proposition that Mr. Webster had assumed that these various advantages, including one which involved the proper timing of the spark with reference to the cycle of the engine, was brought about by the unitary structure. I pointed out that if Mr. Webster made any such statement, it was in my judgment an error. I do not know that he did.

Q Now, in this Defendants' Exhibit No. 52, apparatus, there is a machined taper surface on the plug, which as I understand it is intended to fit into a machined taper hole in the cylinder wall; is that correct (indicating)?

A Yes, there is the way those Fairbanks-Morse plugs are always made.

Q Now, is there any gasket used between the plug, or any part of it and the cylinder wall?

A No.

942 Q When that taper fit is employed?

A No, sir.

Q Now, when for the first time in the art was such a tapered plug used in connection with a correspondingly tapered hole in the engine cylinder wall?

A I cannot tell you that.

Q Was it as early as 1909?

A I do not know.

Q Used, ever? How?

A I do not know. I did not know of it myself until the exhibits were introduced by the plaintiff in this case.

Q Was this Exhibit 52 apparatus, Defendants' Exhibit 52 apparatus, made under your direction?

A No, sir. Well, I will say that I suggested that such an apparatus be made, but I had nothing to do with making it.

Q When was it that you asked to have it made?

A A couple of weeks ago, or so.

Q Since the first session of this trial?

A Yes, sir.

Q That is, during the intermission, was it?

A Yes, sir.

Q Now, if, instead of this tapered plug and tapered hole in the engine cylinder wall, as exemplified in this Defendants' Exhibit 52 apparatus, there were used a cylindrical hole in the engine cylinder wall, and a roughly or loosely fitting plug, and a flange at the surface of the plug, then a gasket would be employed, would it not, between the flange of the plug and the cylinder wall?

A That would be the natural practice.

Q Well, that is and was the common practice, was it not?

A I think so, yes.

Q That was the common practice in 1909, was it not?

A I think so.

943 Q And prior to that time, always, was it not?

A Except where screw plugs were employed, I think that is true.

Q Was a screw plug ever used for a make-and-break igniter, or low tension igniter, in actual practice?

A I cannot tell you that.

Q Did you ever hear of it, or know of it?

A It was shown by the Wattles patent.

Q Was the device of that patent ever made or used, to your knowledge?

A I know nothing about it. I understand it was.

Q Well, you have answered the question, I think. Now in this Weber patent, 825,035, figure 2 of the drawings shows four circles on the inner face of the plug flange, does it not?

A Yes, sir.

Q And three—

A That is, four circles that would be taken to indicate holes. There are several other circles—

Q Well, I mean around the periphery, near the edge (indicating).

A Yes, sir.

Q And three of those circles are of the same size, and one is a little larger; that is correct?

A That is correct, yes.

Q The one representing the pin, thirty, is larger than the other three, is it not?

A Yes, sir.

Q And of the three bolt heads shown in figure 3 of the Weber patent, all of them are of the same identical size and shape, are they not?

944 A Yes, and also those shown in figure 4 are apparently of the same size and shape.

Q Referring now to this apparatus, Plaintiff's Exhibit 11, and 11-A, and to the apparatus, Plaintiff's Exhibit 12, did I correctly understand you to say in substance during your direct testimony, that if the exhibit 12 apparatus, exemplifying that of the Kane patent, is tilted or shifted in its position on the engine cylinder, that the time of the spark production relative to the engine cycle will be altered?

(Plaintiff's Exhibit 11, 11-A and 12 shown to the witness.)

A Yes.

Q And that the same thing is true of the apparatus—of Plaintiff's Exhibit 11 and 11-A?

A Yes, sir.

Q Do you recognize that it is true, however, that when the magneto of the Exhibit 11 apparatus is shifted in its position on the cylinder, that the relationship between the generating mechanism and the electrode mechanism will necessarily be altered or disturbed; that is to say, if the plug is bolted to the engine at one point, and the magneto per se is supported upon the engine at some other place, that if you for some reason—if for some reason the magneto itself is shifted in position, the time or position at which the electrodes in the engine cylinder are opened, relative to the time or position of the rotor magneto, will be altered?

A Yes, sir.

Q That is not true, is it, of the plaintiff's Exhibit No. 12, and No. 47, apparatus?

A No.

Q Now, do you say that in apparatus exemplified in Plaintiff's Exhibit No. 11, you will get the same spark production and the same synchronism as between the opening of
945 the electrodes, and the generation of the current wave, regardless of any shifting of the generator?

A No.

Q Or, shifting of the position of the generator?

A No.

Q There will be a difference, will there?

A If the generator shifts, where you have a double unit, that relation will change.

Q Well, that will change the spark production, will it?

A Yes, sir.

Q So that with the magneto in one position you might get an effective spark, whereas with it shifted into another position you might not get an effective spark?

A That is correct. That, of course, is assuming that the device is put on so flimsily that it will shift, which I take it was the principal trouble with the particular device, that Exhibit No. 11. The mounting of it was intolerably flimsy, ridiculously so. In practice, where the apparatus is properly bolted onto the engine, I think this matter of the magneto shifting is largely an illusion.

Q And also the matter of the shifting of the position of the plug, is that similarly an illusion?

A The matter of the shifting of the plug? Yes, quite true. The natural way to make any such device, where you wanted to register, is to dowel it in, just as these devices are doweled in, as in the Podlesak patents.

Mr. Williams: This Wattles apparatus, that you referred to, has that been offered in evidence?

Mr. Mason: Yes, that is 53.

Mr. Williams: Defendants' Exhibit No. 53, when was that first made, do you know?

(Defendants' Exhibit 53 shown to witness.)

A I do not know anything about that at all. I saw it 946 first last week. Apparently it was—

Q Well, I think you have answered the question. That conforms, does it not, with the Wattles' patent No. 990,935, the application for which was filed on June 1, 1910, does it not?

A Substantially, yes. When I said I knew nothing about it, I mean I know nothing about the original origin or history of that particular piece of apparatus. All I know about it is the comparison that is made with this patent.

Q Well, you do not know that apparatus, like this Wattles' Exhibit, or like this Wattles' machine, Defendants' Exhibit 53, was ever made—

A No, I do not know.

Q —as early as 1909?

A No. It would be my conclusion that it was not.

Q That it was not?

A Was not. I only referred to it as embodying in some respects the construction of the earlier wattles patent. Per-

haps I should better say, as "illustrating," rather than "embodying."

Mr. Williams: That is all, I think.

Mr. Mason: That is all.

The Witness: I think I should like to say, before I leave the stand that, in thinking over this proposition of the use of a coil in connection with these ignition devices, that a coil would not and could not be used in connection with the make-and-break battery ignition, leastwise I do not now see how it would be possible.

Mr. Williams: Well, in view of that statement, I think I will ask you another question. Won't you get those batteries here, Mr. See?

(Dry cell batteries produced.)

Q As I understand you, batteries would be used with this equipment by connecting as I now do, a battery of some six volts with the fixed and moveable electrodes, of say, this Plaintiff's Exhibit Defendants' Type A apparatus?

947 Q Now, I will connect the terminals of the four cells of dry battery, one with the fixed electrode of this Plaintiff's Exhibit Defendants' Machine Type A, and make the other wire free, as it is, to be connected with the frame; and will ask you if that is the circuit arrangement which is employed when this apparatus is to be used as a battery igniter?

(Counsel illustrates with batteries and apparatus.)

A Yes, I understand so.

Q Now I have made the connection with the frame, have I not? (Indicating.)

A Yes.

Q Will you open the contacts there, and ascertain whether you get a spark? I will hold the connection. You can do that, can't you?

A Have you got one of those levers there, for handling this proposition?

Mr. Williams: Yes, get him one. Isn't there one of those levers there? I do not find the lever here, Mr. Carter. Can you separate those with a screw driver, in order to ascertain that?

(Witness demonstrates, with apparatus.)

Q Do you get any spark?

The Court: No, he did not get any spark. But you did not get them apart that time. Try it again.

(Witness demonstrates.)

Mr. Williams: Q Let me ask you this question: You have endeavored to operate this apparatus, and you could not see that any spark was produced, could you?

A No.

Q Now, without changing the apparatus at all, let me connect this coil in circuit with the battery. I will connect it in series, between the battery and the apparatus which you have been attempting to operate, and I will ask you now 948 to operate it, with this coil connected in circuit; and then state whether or not you see any spark.

(Witness demonstrates)

Q Will you look at that, Mr. Carter, and see whether there is any spark.

The Court: A good big spark.

Mr. Williams: How?

The Court: A good big spark.

Mr. Williams: Q Do you think it was a good big one, Mr. Carter?

A I did not see whether it was a big one or a little one.

Q Won't you look? I want the record to show.

The Court: I guess it is sufficient, if I state so, is it not?

Mr. Williams: I am satisfied. That is all, Mr. Carter.

The Court: What kind of a coil is that, Mr. Williams?

Mr. Williams: Why that is a common coil, with a single coil of wire on it, coarse wire.

The Court: You think it was rather coarse wire?

Mr. Williams: I suppose so. That is what I told him to go out and buy; and I guess that is it.

The Court: And the wire is all the same--

Mr. Williams: Single winding. That is all.

The Court: Is the testimony closed?

Mr. Williams: I presume we had better offer the kick coil and the battery; I ask that they be marked as plaintiff's Exhibits 72 and 73, respectively.

949 H. R. VAN DEVENTER recalled, on behalf of the corporate defendants, further testified as follows:

Direct Examination by Mr. Mason.

Witness identified himself as the inventor named in patent No. 1,236,790, which has to do with battery ignition. Asked to explain the apparatus to the court, the witness said:

"This device here is equipped with a magneto. In case of any trouble with the magneto it is removed from the bracket, and on some classes of engines, of which there are large numbers in use, a battery of suitable voltage is connected directly to the frame of the engine, and the insulated electrode. In such cases no kick coil is used, the voltage of the battery being usually from sixty to eighty volts, the voltage being raised to increase the voltage sufficiently to produce the proper spark at the electrodes, that matter being merely a question of the voltage of the battery used. In the smaller engines, the most common practice is to connect a battery of from six to eight volts, in series, with the usual kick coil, producing results which have just been exhibited here by Mr. Carter.

Q Why was it, in the first instance here, when they made the trial, they did not get any spark?

A With the dry cells?

Q With the battery, yes.

A Well, the voltage was not sufficient.

Q Will you state just approximately what is the condition, or position, rather, of the rotor, or armature, of these magnetos, to the pole pieces, when you get your highest, maximum current generation?

A Mr. Mason, that is a very difficult thing to explain, 950 with any given type of magneto. In the rotary type, having an armature of the diameter of that used on the smaller magneto which you have there, the critical point or peak occurs with the armature approximately a sixteenth of an inch breaking; now, that would depend so largely on the electrical characteristics of the machine, the characteristics of the iron in the armature, and other factors, that it is almost impossible to answer it definitely.

Q But it is a fixed equation, for any definite magneto; is it not?

A Substantially so.

Asked if the speed elements have much effect upon the time at which the maximum current wave was generated—the speed of the rotor or armature, witness said:

“There is, due to the reaction of the armature itself, a difference in the time at which the spark is produced, but I think that difference, is totally lost sight of in actual practice, because it is so small that it would require laboratory instruments for its deduction. For instance, if I operate this magneto here, or, rather, some one that I can operate by hand, with the springs, you would get the break at one time, and if I operated it with my fingers you would get it at another, the difference due to the difference in speed at which the armature was rotated would be so slight that it would only be measurable in terms of thousandths of seconds. There is no way to determine it outside of the laboratory, certainly none in the field on gas engines.

The Court: Mr. Webster says that when the armature is turned by the action of the rod of the engine, it goes about 30 degrees and the flies back by the action of the spring, and then is the maximum current?

951 A Yes, sir, when it goes back beyond the center and flies back on the rebound.

The Court: By the impulse of the spring?

A Yes.

Mr. Mason: Q And when you make the current by hand you turn it as though the spring would turn it, in the same direction?

Mr. Williams: I object; that is leading.

Mr. Mason: Q It has been testified here by Mr. Webster, I believe that the shifting of the magneto when mounted on the boss threw the spark out of timing with the compression in the engine; would it make any difference whether this magneto was on a boss or on a spark plug as to throwing it out of time with the compression of the engine.

A None whatever.

Q That is, if the magneto shifts, it is bound to get out of time wherever it is placed?

Q Yes, wherever it is placed, regardless of its location.

Q Whether it breaks with your finger or earlier?

A Yes, sir. I would like to continue that answer.

The Court: Go on.

A The question as to the timing of the magneto with the piston is very serious in some types of magnetos and

not so serious with others. Now, with the rotary type magneto, with which I am most familiar, considerable latitude in movement can be allowed without seriously affecting the operation of the device, and if I am permitted to have the model, that can be operated by loosening the bolts on the magneto; we will move it around on the base and you can see that that is not such an important factor.

Mr. Mason: Q Which one do you have reference to?

A The one with the handle on it, the Weber model, I think.

(Mr. Williams indicates a model.)

A I don't know anything about that one. (Indicating)

That is movable on the base to some appreciable extent. Now, you see the magneto is loose on its supporting base. Now, that magneto is on the engine. (Indicating on stand.) Will you operate that, Mr. Mason? I will have to hold the magneto in one position? Is there a spark?

Mr. Mason: Turn it around so the Court can see it.

The Witness: See that spark? I want to move the magneto as far as I can without actually getting this rod out. Do you see the spark?

The Court: Yes.

A Now, when you move the magneto laterally on its base about a quarter of an inch, and I call your attention to the fact that that lateral movement—does it still spark?

The Court: Yes.

A (Continuing) —does not affect— It is completely out of engagement with its operating mechanism now,—does not affect the time of the production of the spark in relation to the engine cycle, provided the face of this electrode arm here is made sufficiently broad enough to allow for any lateral shifting of this. Now, to shift it in the other direction does not affect it, either, provided the face of this striker arm is sufficiently broad to permit it. It is only a question as to the size of the various parts. Is it worth while to shift this the other way on the base?

The Court: No.

Mr. Mason: I guess that is sufficient. That is all, unless Mr. Williams wants to cross-examine.

Cross-Examination by Mr. Williams.

Q In making this demonstration just now, you did not make any angular shift of the magneto did you?

A It is shifted about on its bracket, as it would naturally come loose on a bracket of that character.

A You did not make any angular shift of the magneto, did you?

953 A You mean, rotate the spark plug in this engine?

Q You know what I mean by an angular shift as between the magneto and the electrode mechanism.

A No; you couldn't make any angular shift. It is physically impossible.

Q You didn't make any, then, did you?

A Certainly not; it is impossible.

Q Well, that answers the question. That is all.

Mr. Mason: We offer in evidence the file wrapper and contents of the Kane Patent 1204573 and ask it be marked Defendants' Exhibit Kane File Wrapper 1204573, No. 54.

Mr. Mason: We offer in evidence the file wrapper and contents of the Kane Patent 1280105, granted September 24, 1918? and ask that that be marked Defendant's Exhibit Kane File Wrapper 1280105, No. 55.

Mr. Mason: We offer in evidence a certified copy of the transcript of record in the interference of Podlesak versus Kane, Patent Appeal Docket No. 1147, and ask that it be marked Defendant's Exhibit Kane-Podlesak Transcript No. 56.

Mr. Mason: We offer in evidence certified copy of the decision of the Court of Appeals of the District of Columbia in the interference with Kane versus Podlesak, Appeal Docket No. 1147 and ask it be marked Defendant's Exhibit Kane-Podlesak Interference No. 57.

Mr. Mason: We offer in evidence the Kane patent 1204573 and ask that it be marked Defendant's Exhibit Kane Patent 1204573 No. 58.

Mr. Mason: We offer in evidence Weber Patent, 820535, and ask that it be marked Defendant's Exhibit Weber Patent, No. 59.

Mr. Mason: We offer in evidence the Wattles Patent, 909264 and ask that it be marked Defendant's Exhibit Wattles Patent 909264, No. 60.

954 Mr. Mason: We offer in evidence copy of Hennig Patent No. 916312 and ask that it be marked Defendant's Exhibit Hennig patent No. 916312, No. 61.

Mr. Mason: We offer in evidence the Wattles Patent No. 990935, dated May 2, 1911, and ask that it be marked Defendant's Exhibit Wattles Patent 990935, No. 62.

Mr. Mason: We offer in evidence the Olds Patent, 635,506, dated October 24, 1899, and ask it be marked Defendant's Exhibit Olds Patent No. 63.

Mr. Mason: We offer in evidence the Dickinson Patent 754,286, dated March 8, 1904, and ask it be marked Defendant's Exhibit Dickinson Patent No. 64.

Mr. Mason: We offer in evidence the Cooper Patent, 773,063 dated October 25, 1904, and ask that it be marked Defendant's Exhibit Cooper Patent, No. 65.

Mr. Mason: We understand it is admitted between counsel that the British Patent to Milton No. 24838 of 1909, was sealed August 25, 1910. That is subject to correction if in error.

We offer in evidence the certified copy of the assignment of John L. Milton to Lynn A Williams, Trustee, recorded in Liber D-99 page 86, and ask it be marked Defendant's Exhibit Milton Assignment No. 66.

Mr. Mason: We offer in evidence a certified copy of assignment of Lynn A. Williams, Trustee, to the Webster Electric Company, recorded in Liber D-105, page 69, and ask it be marked Defendant's Exhibit—

Mr. Gifford: When was it recorded?

Mr. Mason: July 1, 1918.

Mr. Gifford: What is the date of the assignment?

Mr. Mason: 28th day of June, 1918, it bears the date. And ask that this be marked Defendant's Exhibit Assignment Lynn A. Williams, Trustee, to the Webster Electric Company, No. 67.

955 Mr. Mason: We offer in evidence the certified copy of the Assignment of the Webster Electrical Company of West Virginia to the Webster Electric Company of Wisconsin, dated 12th day of March, 1918, recorded July 1, 1918, Liber D-105, page 92, and ask it be marked Defendant's Exhibit Assignment Webster Electric Company of West Virginia to Webster Electric Company of Wisconsin, No. 68.

Mr. Mason: We offer in evidence the patent of H. R. Van Deventer, 1236790, August 14, 1917, and ask it be marked Defendant's Exhibit Van Deventer Patent No. 69.

Mr. Mason: We offer in evidence clippings of advertising matter of the Webster Electric Company, Racine, Wisconsin, and ask that they be marked Defendant's Exhibit Webster Electric Company Advertising Matter, No. 70.

Mr. Mason: We offer in evidence a circular entitled "Webster Milton Low Tension Magneto," and ask that it be

marked Defendant's Exhibit Webster Electric Company Circular, No. 71.

Mr. Bulkley: It is stipulated by counsel that the patent of Kane, granted on the original application, No. 1204573, was assigned on April 20, 1916, to the plaintiff in this lawsuit.

Mr. Sturtevant: Now, I assume that the stipulation you have entered into has the same effect with respect to the second patent. I have not seen that.

Mr. Bulkley: It is also stipulated that on the same date, to-wit. April 20, 1916, the pending application finally resulting in the Kane patent in suit was assigned to the plaintiff in this lawsuit.

Here occurred a discussion between counsel respecting the date of payment of the last notes given by the Webster Company to Mr. Milton in payment for the patents and applications which had been assigned by him to Mr. Williams as trustee. The original notes were produced by plaintiff's counsel and it was agreed that the last of them was paid on or before June 9, 1916.

956 Defendant's counsel offered in evidence as Defendants' Exhibit 72 a letter dated April 22, 1915 from Lynn A. Williams to Henry J. Podlesak, it being stipulated that the letter was written by Mr. Williams and sent through course of mail to Mr. Podlesak. Plaintiff's counsel objected to the introduction in evidence of the letter as irrelevant and immaterial. Received subject to objection.

Thereupon HENRY J. PODLESAK, recalled on behalf of the defendants, further testified as follows:

Direct Examination by Mr. Peaks.

"Q You have heard the discussion here with reference to the draft of a form of agreement, which preceded the execution of the contract, between yourself and your brother and the Webster Electric Company, haven't you?

A Yes.

(Objection by plaintiff's counsel—overruled)

Q Did you see the one that Mr. Williams produced here yesterday, the typewritten one, with the pencil interlineations?

A Yes, sir.

Mr. Williams: We make the same objection.

The Court: It may be received.

Mr. Peaks: Q Were those your interlineations?

A No, sir.

(Plaintiff's counsel renewed its objection, and a discussion between counsel and with the court ensued.)

Mr. Williams: Let me ask you what was said between you and the court relative to that paper. Let us get that into the record.

The Court: I will state that. I asked Mr. Peaks whether he had found the papers, or found anything in them; and he called my attention to a certain interlineation in pencil, 957 and said he did not know who made it.

Mr. Williams: Well, your Honor saw what the interlineation was?

The Court: I did; but that is not on the record, and it is of no consequence, of any kind.

(Further discussion between counsel and with the court)

The Court: What was the last question and answer?

(The last two questions and answers were read)

The Court: Yes. Let it stand at that.

Cross-Examination by Mr. Frank.

(Without waiving objection to the relevancy of the testimony given.)

Q Do you remember that shortly before the opening of this trial, Mr. Fischel, Mr. Frederic Fischel, who has testified here, called you on the telephone?

A Do you mean shortly before this case opened?

Q Yes.

A Yes, sir.

Q And did he have a conversation with you relative to the magneto contracts of February 5, 1914?

A He asked me something about them, yes.

Q And did he refer to the drafts of contracts that were submitted by you to him, that led up to the final execution of those contracts?

A Yes, and he also asked me about a letter that he wrote to me sometime in January, 1915.

Q But did you not tell him then that you had now in your possession, or, at the time of that telephone conversation, in your possession, certain of the drafts that were made that led up to the final contract?

A I told him I may have,—I did not know whether I had them or not.

Q You did not tell him that you then had them?

A No, sir. I told him I had the original, but not any
958 of the drafts.

Mr. Frank: Will you repeat that?

(Answer read)

Q Have you still those copies of the originals?

A Yes, sir.

Q And by the originals you mean those that were finally executed with the signatures of both parties?

A Yes.

Q And you did not tell them that you had any drafts that you made in longhand and submitted to him?

A No, sir.

Mr. Frank: That is all.

Redirect Examination by Mr. Bulkley.

Q Mr. Podlesak, is it your recollection that any drafts were made, and presented to you by Mr. Williams, or Mr. Fischel?

A Yes, there were—

Q Several of them?

A Several of them.

(Objection by plaintiff's counsel. Objection sustained.

Further discussion between counsel and with the court)

Mr. Williams: We move to strike out all of this testimony of Mr. Podlesak, for the reason that our testimony was stricken.

The Court: Motion denied.

Thereupon JOHN LEWIS MILTON resumed the stand for further cross examination, and identified a letter and a telegram received by him from Mr. T. K. Webster, the letter being written in long hand by Mr. Webster from Tiffin, Ohio, and dated September 9, 1908, and the telegram having been sent to New York May 7, 1909, and both received by the witness in due course. They were offered in evidence by plaintiffs' counsel as Plaintiff's Exhibits 74 and 75 respectively.

959 Plaintiff's counsel renewed his objections to Defendants' Exhibits Nos. 55, 56, 57, 58, 59, 60, 61, 62, 63, 64

and 65 on the ground that they were inadmissible to limit or restrict the scope, or to raise the question of validity, of the claims of the patents in suit, and upon the ground that they were irrelevant and immaterial for any other purpose. The court ruled that they should be received subject to objection.

Thereupon H. G. WEBSTER recalled on behalf of plaintiff in rebuttal, testified as follows:

Direct Examination by Mr. Williams.

960 Q You are the H. G. Webster, are you not, who was previously sworn, and who previously testified in this matter?

A I am.

Q You heard, did you, the testimony given by Mr. Carter, on behalf of the defendants?

A Yes, sir.

Q At the conclusion of his testimony Mr. Carter said:

"I think I should like to say, before leaving the stand, that on thinking over this proposition of use of the coil in connection with this ignition device, that a coil would not and could not be used in connection with the make-and-break battery ignition; leastwise, I do not now see how it would be possible."

Will you state whether you agree with Mr. Carter, that a coil would not and could not be used, and give the reasons for your answer?

A I disagree with the statement—

Mr. Mason: May It please your Honor, I think it is perfectly obvious that Mr. Carter was talking about the double-wound induction coil.

The Court: Surely he was; he was talking about the double-wound coil, large and small wires, and not talking about the coil, such as the one that was produced here. If you want to ask the question, as so changed, why, go ahead.

Mr. Williams: Well, I have quoted the answer, as it stands in the record.

The Court: Yes, but he was talking about that kind of a coil.

Mr. Williams: Q Well, do you agree with Mr. Carter that

an induction coil would not be used in connection with
961 make-and-break battery ignition,—that is, an induction
coil with a coarse winding and a fine winding, and a
vibrator, or other means for interrupting the current supplied to the coarse coil.

A Such an induction coil, having a coarse wire winding and a fine wire winding, and operated by means of a few cells of battery, as, for example, a six volt battery, is the type of coil which is ordinarily employed for jump spark ignition, with batteries.

The Court: Q How is the battery attached to the magneto?

A You do not use such a coil actuated by battery with a magneto.

Q Well, I mean with a battery. I misspoke.

A Using a battery, and a jump spark induction coil, the battery is connected in circuit with the coarse wire winding of the coil, and with a vibrator, which is actuated rapidly by the core, magnetized core of the coil, and the entire circuit is opened and closed by a circuit breaker carried on some moving part of the engine.

Q And what is the result?

A The result is that when the circuit is closed, through the coarse wire of the coil, there is a rapid vibration, which causes a succession of sparks to flow across the terminals of the spark plugs in the cylinder.

Q The voltage is stepped up?

A The voltage is stepped up, to a very high value in order to jump the open break at the terminals of the spark plugs.

Q A very small current?

A The current value is low.

962 Mr. Williams: Q Now, when a make-and-break igniter is employed, with battery, will you state whether or not any kind of a coil is employed, and, if so, explain why, using if you like, the battery and coil which were introduced in evidence yesterday as Plaintiff's Exhibits Nos. 72 and 73?

A With a low tension make-and-break ignition system, the almost universal practice is to use a few cells of battery, giving a current, as Mr. Carter said, at about six volts, and with such a battery, and in such a system it is essential to employ some sort of a coil in circuit with that low voltage battery. The reason for that can best be illustrated by using the batteries and spark coil which were used here yesterday.

The Court: Yes.

A I now take the four cells of dry battery which were used yesterday afternoon in connection with Mr. Carter's cross-examination, and will show to the court the effect of closing the circuits of these batteries, in the absence of the inductance coil, or kick coil, which is ordinarily employed in a low tension battery, make-and-break ignition system. It will be observed that when these terminals of the wires leading to the outside ends of the battery circuit are touched together, and separated, that there is but a slight spark.

(Witness demonstrates.)

Mr. Williams: Q Would that be enough to effect ignition of an engine?

A A spark that could not possibly ignite the charge in an engine cylinder. I now connect in circuit the kick coil, or inductance coil, as it is more properly to be called, in circuit, and now close the battery circuit, and the spark which is produced is in the nature of a flaming spark, one which obviously would give good ignition. The reason for the difference in the character of the spark present when the kick coil is in circuit involves some little explanation of the physical
963 characteristics of this coil, and of electro-magnetic action.

Q If, as you go along, Mr. Webster, you can point out any analogies applicable to the operation of magnetos, you may do that, if you find it convenient.

A There is a direct analogy, which I will explain as I proceed. When the circuit of this battery, or any battery of about this voltage, is closed through the coil, the current does not instantly rise to its full value; there is a period during which the current is gradually building up to the steady value, which is the result of the voltage of the battery, and the ohmic resistance of the coil. This transition period, while brief, and to be measured possibly in hundredths of a second, is a definite period. The reason for that gradual increase in current value is to be found in the presence of the iron core of the coil, and in the fact of the layers of winding which are wound around the coil. When the circuit is first closed, the current flowing through the coil tends to magnetize the iron core: that magnetization of the iron core produces a reactance, which tends to prevent the increase in current value, and that is a progressive action, the magnetization resulting from the core in its turn opposing the building up of the current, resulting in the fact that a time interval is required for

the current to reach its final value. The same characteristic is true with respect to a decrease in magnetization of the core. When the circuit is broken, or if it be attempted to reduce the value of the current flowing through the coil about the iron core, the magnetization or the magnetic energy stored in the iron core tends to cause the current to persist, the result being that when the circuit is broken at the terminals of the wire, as I just did, or at the terminals of the igniter in an engine cylinder, that break acts somewhat as the opening of a valve, which allows a sudden and considerable change in the magnetic condition of the core, resulting in the intense flaming spark which you saw.

(Witness demonstrates.)

A To put it another way, the building up of the current value in the coil, and the magnetization of the iron in the core of the coil, stores energy in that coil, and the breaking of the electrical circuit releases that energy all at once, and the effective spark is the result of the energy previously stored in the iron.

And, as the court has seen, in the absence of that iron-core, that same steady current value produces a spark which is obviously ineffective. It is because of the iron in the core, and the windings around the core, by means of which the core is magnetized, that the breaking of the circuit results in an effective spark.

There is a direct analogy, or rather, as I say, an analogous condition, in one of these magneto generators which we have been talking about. As the inductor or armature of the magneto generator is moved within the magnetic field, there is a change in the magnetic condition of that portion of the iron within the windings or encircled by the windings, as a result of such motion.

That change in magnetic condition tends to build up current in that winding, but that current reacts, and opposes the magnetic change, and likewise the motion which produces that magnetic change. Possibly I can emphasize that by showing to the court the difference between the opposition, which is met in a magneto machine, with the circuit open, and closed.

I think I have here a magneto of substantially the same character as is used in these magneto ignition systems, this, by the way, being one which has been used for testing out electrical circuits, and other purposes.

(Witness produces a model).

A If I can get your Honor to turn the crank, you will see how easily that turns, and if you will turn it fairly rapidly, so as to get a voltage, you will see that closing that circuit immediately increases the force required to turn it.

(Model demonstrated.)

A That is one of the effects of the reaction between the magnetic change and the current produced by the magnetic change, and in these ignition magnetos the presence of that reactive effect accounts for the lag in phase of current with respect to the motion of the inductor or armature. It is the effect of the interval which is required to build up electrical current, or magnetization, in the presence of a closed circuit coil encircling the iron in which the magnetic changes are to be effected; and the spark which is secured from one of these magneto machines is dependent upon the time at which this electrical circuit is broken, with respect to the condition of the iron about which the winding of the magneto is wound.

In other words, to get an effective spark, or to get the best spark, the one which will give the maximum power of the engine, that break must occur at the time when the iron encircled by the winding is in a condition and position such that it will give the most sudden and considerable change in magnetic condition, and the ignition spark is not the spark resulting from the breaking of a half ampere, or of one ampere, or a five or ten ampere current, but is a spark resulting from the sudden and considerable magnetic change in the condition of the iron within the coil.

Mr. Williams: To what extent, if ever, is a sixty or 966 eighty or one hundred volt source of current used in connection with a make-and-break igniter for gas engine ignition, as was referred to, I think, by Mr. VanDeventer in his testimony yesterday?

A Of course I do not know just what Mr. Van Deventer had in mind when making that statement. I have heard of isolated individual instances in which current was supplied to a make-and-break igniter by connection to an electric light circuit, or a large storage battery, which would give some such voltage as that, and in which was included a lamp or some other device to control the excessive flow of current, which would otherwise result, but the almost universal practice, with these low tension make-and-break battery igniters,

is the use of a low voltage battery, and a kick coil, such as I have just demonstrated.

Q You heard Mr. Carter's testimony relative to his understanding of the disclosure of the Weber patent, and saw, did you, the defendants' Exhibit No. 52 apparatus, which was introduced in evidence in that connection?

A I did.

Q Will you state whether you agree with Mr. Carter, in your understanding of the disclosure of the Weber patent, and in so doing state the reasons for your answer?

A I do not understand the disclosure of the Weber patent as Mr. Carter seems to have done; and I think I can best emphasize my understanding of the patent by reference to another model which I brought over here this morning.

(Witness produces a model.)

A This model to which I refer is one, I understand, which was built for and used in connection with one of the interferences in which the patents here in suit have been involved; and to illustrate just what this represents with respect 967 to the disclosure of the Weber plant, I will proceed to do what would have to be done in removing the Weber device from an engine with which it was associated.

Q Mr. Webster, in order, perhaps, to save time, later, may I suggest that you operate this apparatus before you (indicating)?

A I had intended to do so.

(Witness demonstrates.)

A The court will observe that this is operated by a pusher attached to the engine, and that when it is operated it trips and makes a spark at the sparking electrodes, just as the Weber patent describes.

The Court: Just as this did, too (indicating)?

A And just about the same sort of spark that the previously presented model produced; and to show the relation of this device to the engine, I will first remove the igniter block. I have now removed the two bolts which hold—the two lower bolts, I should say, by means of which the igniter block is held to the engine cylinder, and, in doing so, the shelf upon which the magneto is mounted comes away, at the same time. The removal of the third bolt allows me to remove the igniter block itself. The bracket, which I think is called thirty-one in the Weber patent, still remains on

the engine; and to remove this portion of the Weber device necessitates the removal of two more bolts.

(Witness demonstrates.)

A We now have the Weber device model, as in the condition in which I understand it would be when removed from the engine cylinder; the igniter plug is one piece; the bracket or shelf, containing the magneto, is another piece; and the spring driving, or, actuating spring, with its supporting bracket, is the third piece. It is, as I understand it, 968 really a three piece device, and one which it is obvious, if made in this way, cannot be operated if removed from the engine in the way in which it is operated when on the engine.

I would like to call attention, also, to the igniter block itself, in comparison with Figs. 2 and 3 of the Weber patent drawing.

It will be observed that, looking at the front of the igniter block of this model which I have produced, it corresponds exactly to Fig. 3 of the Weber patent drawing, and that the backside likewise corresponds exactly, except that the hole which supports the spring post does not go clear through; and, as I understand these drawings, the holes through which the bolts pass for screwing the igniter block to the engine cylinder are illustrated in that patent as smooth holes; and my understanding is that the bolts go clear through, and into the engine cylinder, as they must, if we are to have any packing or other means for making a gas-tight joint.

The Weber patent does not disclose a tapered plug, or one which can be in any way held in place by means of a single bolt, as in the model which Mr. Carter produced.

Q What pressure is developed, in a gas engine cylinder, at the time of the ignition of the charge?

A Oh, at the time of the ignition of the charge, the explosion pressure will range up to two or three hundred pounds, a pressure which would blow out a gasket, if not secured by three bolts, as illustrated in the Weber patent.

Q What, in your opinion, would be the result of the development of such a pressure as two or three hundred pounds in the gas engine cylinder, in so far as its effect upon the integrity of the igniter block is concerned, provided it were bolted with a single bolt; in other words, would the igniter block such as is shown by Weber, if attached with a single

bolt, would that withstand without breakage the pressure 969 developed in the engine cylinder?

A It would not only be liable to break under the explosion pressure, but it is extremely doubtful whether a suitable degree of compression could be secured if the Weber igniter block were fastened with a single bolt.

Q Why is that?

A Because to hold the packing in place it has got to be supported, the block has got to be supported and clamped against the engine cylinder at more than one point.

Q As removed from all reference to the engine cylinder in this model of the Weber apparatus which you have presented will you state whether or not there is any possibility of a hand operation of the magneto igniter equipment so as to produce or test any spark at the electrodes.

A No; there is no such possibility with the device disconnected from the engine, because of the fact that the magneto when disconnected is wholly disassociated from the igniter apparatus.

The Court: I think I could answer that myself. That is where there is no unitary structure.

The Witness: Where there is no unitary structure.

Mr. Williams: Now, in how many pieces was defendant's Exhibit 52 dismantled or might it be dismantled from the engine cylinder; that is the model constructed in accordance with Mr. Carter's alleged understanding of the Weber patent?

A In the defendants' model to which you refer the removal of the magneto and igniter plug from the engine and the removal of the driving spring for actuating the magneto from the engine would be in the nature of a two-piece disassembling; in other words by removing the igniter plug and magneto you have removed one piece, and by removing the driving spring with its supporting parts you have removed the second piece. It is a two-piece arrangement rather than a three-piece arrangement as I understand the Weber patent to disclose.

Q As Mr. Carter demonstrated the number 52 apparatus you saw him did you not effect a hand operation of the magneto and electrode part which he removed from this supporting member representing the cylinder upon the removal of the single bolt. You saw that did you?

A Yes sir.

Q Will you explain whether the hand operation of that

much of the apparatus of this defendants' Exhibit 52 can be made to duplicate practically or effectively the operation which would be secured with the apparatus mounted upon an engine cylinder and at the same time connected with the driving spring and push finger on the mechanism of the Weber patent; and give the reasons for the answer?

A No. The sort of hand operation which Mr. Carter made of Exhibit 52 magneto, and similarly of the model Wattles magneto which he had, is not such an operation as takes place on the engine and is not an operation which would indicate the character of spark to be expected when the device is mounted on and operated with the engine cylinder.

The reason why this is so involve some further explanation of the physical characteristics of these devices.

In the first place a hand operation, that is twisting the armature by hand, does not at all reproduce the velocity of movement which is secured with the driving springs by means of which the machine is intended to operate. Such hand operation is one necessarily of irregular velocity and cannot approach the speed which you get with the driving springs.

One result of this manual velocity is that you do not get at the time of breaking the contact when operated by hand the same phase relation between the current and the movement of the inductor which is present when it is driven at the high rate of speed resulting from the driving springs, and that difference in phase relation has a very decided effect upon the character of the spark produced.

971 Another reason—

Q Before you go to that, are you speaking there of the phase of the current, or the mechanical phase?

A The phase of the current impulse with respect to the mechanical movement of the inductor or the armature.

Another different resulting from the lack of operating velocity, when under hand operation, is that you do not get the voltage which is to be expected and required when driven at the high speed by means of the driving springs.

The Court: Can you make any estimate of the difference?

The Witness: Under hand operation the spark voltage might be only ten per cent.

The Court: Of the other?

The Witness: Of the other. And it might be fifty per cent. It depends entirely upon the characteristics of the

device. But it is not what you would get, and does not approach what you would get, under normal operating conditions.

The Court: Mr. Carter called it a fat spark.

The Witness: That is one of the terms commonly employed to express the appearance of what is understood to be a good and satisfactory ignition spark; that is that sort of flaming or radiating appearance which you get with the generating of a good spark. The term is "a fat spark."

In illustration of the result of inadequate voltage under manual or hand twisting operation I might point out what results in case the spark plug or the igniter terminals are partially short circuited.

The court will probably recognize that in a device of this kind in operation there will be a collection of carbon, carbon dust, about the insulated electrode, which tends to form a circuit leading directly to the iron of the cylinder rather than through the movable electrode. And when one operating an engine of this kind takes the plug off the cylinder, in case 972 the engine fails, or he thinks he is not getting a satisfactory ignition, it is of considerable advantage to determine whether or not there is such a partial or complete short circuit present.

It follows that if the device is operated by hand, as Mr. Carter operated the Weber model or the Wattles model, that if there is a partial short circuit thereunder hand operation, and at low voltage resulting from hand operation, there may be a sort of spark produced at the igniter terminal in case of a partial short circuit, for the reason—

Q What is the reason? Why is that?

A I was going to explain. For the reason that with the low voltage, resulting from hand operation it is not sufficient to jump across these particles of carbon. While at the same time if it is operated by the normal driving springs, and at the speed which would result from the normal operation of the engine, the voltage may be such as to bridge or jump across these particles of carbon and prevent the formation of any effective spark at the electrode contacts. In other words it may look, under hand operation, as though you are going to get a spark in the presence of a partial short circuit, but when operated at the speed and voltage which results from operation with the engine you will be getting no effective

spark at all; you will get the effect of the partial short circuit which will practically kill the ignition.

The Court: You mean you could see a spark in the case of this short circuit you spoke of, off the engine, which is not really an effective spark when it gets back on there?

The Witness: That is entirely possible. That is what I mean.

The Court: In other words you will be deceived by that kind of examination.

The Witness: Yes, just as you are deceived by the presence of the spark under hand operation which by reason of 973 the difference in phase under spring driven operation does not indicate the presence of an effective spark when driven by the engine, by the driving spring, on account of the difference of phase relation under those two methods of operation. The fact it presents some sort of spark does not indicate satisfactory ignition, when you are operating it off the engine. It has got to be something more than a faint spark. Some time it is hard to tell whether the spark which you see is going to be a satisfactory ignition spark, which will give the maximum power from the engine, unless you can know that you are operating under the same conditions with it off the engine, when you are looking at the spark, as it is when operated on the engine and the spark is within the cylinder.

The hand operation of course also involves a different angular movement from what you get when it is operated by the engine. The range of angular movement is apt to be quite different—

Mr. Williams: Q The angular movement of what?

A Of the inductor or armature. When you operate it by hand you have to start it away back, to give it a quick flip and you can get some sort of spark with almost any magneto. But there you have given a different angular movement of the inductor or armature and the spark which you may get is not an indication of what you may expect when the thing is operated on the engine.

Q You heard Mr. Vandeventer's testimony yesterday afternoon, did you not, relative to the extent and practical effect of a change in the current phase relationship under hand operation, as compared with the normal spring operation. Do you recall his testimony, the substance of his testimony?

A Yes, I remember that Mr. Vandeventer recognized that

there was a change in phase relation under hand operation as compared with spring operation.

Q Won't you explain briefly the reason for that change in phase relationship under the different conditions of operation, and state whether or not you agree with Mr. Vandeventer as to the practical effect of the difference in electrical phase under the two conditions of attempted operation? If you have any data or diagrams that will simplify your explanation we shall be glad to have you use them.

A As Mr. VanDeventer expressed it the change in phase relation, under the change in velocity, is due to the reactance between the closed circuit coil about the iron of the magnetic field, of the magneto, and the iron itself. As I have explained, by reference to the spark coil it is the resultant of those opposing actions of the magnetic change upon the electric current, back and forth, which results in a gradual building up of current value, or a gradual change in magnetization.

This reaction in a magneto takes place as the inductor or armature is revolved within the magnetism field, and it will be obvious that as this current change, and magnetic change is a gradual action—that as the speed of swing or of revolution of the inductor is increased that the current impulse or current wave resulting from that change will lag behind the mechanical motion of the armature or inductor.

The result of that lag in phase is more important than Mr. Vandeventer seemed to believe and I can best illustrate that I think by reference, first, to an oscillogram made by me of one of defendants' type B Machines.

This oscillogram to which I now refer is entitled "Oscillogram B, defendants' device Type B," and I produce at the same time the photographic film from which this oscillogram print was made.

This photographic film was produced through the operation of one of defendants' type B devices.

Referring to the oscillogram print, and first to the upper line marked *m*, point *i*—that point indicates the point at which the trip finger in this test was engaged by the push rod of the engine.

975 During the time interval represented by the space extending from point 1 to point 2 the armature was being moved against spring tension to the cocked position. At point 2 the trip finger is released from the push rod and recoils or flies back to make the current impulse which is to be utilized for the ignition spark. The time occupied by that

recoil is represented by the space extending from point 2 to point 3, point 3 being the point at which the operating arm of the electrode is engaged by the striker of the yoke connected with the armature, to cause the separation of the electrode contacts.

The center line T is a time line used as explained in my direct testimony to serve as the means of calibrating the time value on the film and calculating the time occupied by the several events recorded on the film.

I explained in my direct testimony that this center curved line was produced by current from a 60 cycle alternating source of current, and therefore each cycle—that is each complete double swing, represents on the film one-sixtieth of a second; and it is by means of this curved time line that I am enabled to calculate the time intervals involved in these operations.

The lower curved line represents the current curve resulting from the operation of a type B magneto under the condition in which, instead of closing the circuit of the magneto through the spark electrodes, it was closed directly, in order that the continuity of the current curve should not be interrupted by the separation of the electrodes.

And one purpose of this film was to compare the current curve produced by that machine with the times of engagement of the trip finger, the release of the trip finger and 976 the separation of the electrodes, in order to determine at just what point in this current curve the most effective spark ignition could be secured.

The lines bearing current values in amperes indicate the point in this curve at which separation of contacts may occur in this Sumter type B magneto.

The upper line, crossing the curve, bearing the character .231 amperes, is the current value at the instant the contact electrodes are separated with the device in its normal operating condition, using new electrodes.

I will explain by reference to another chart that the wearing away of the electrodes causes a change in the time at which the operating arms of the electrodes are engaged.

The lower line represents the current value which will have been reached under the assumption that the electrodes are separated at the instant the rotor or inductor of the device passes through the vertical or neutral point; that is this lower value line indicated as .046 amperes is the value which

the current curve has reached at the time the yoke of the device stand exactly vertical in its recoil after being released.

These two lines, recorded as .046 amperes and .231 amperes, represent the angular movement of the rotor or inductor through fifteen degrees.

In other words if the circuit through the contact electrodes is by the operation of the device broken when the yoke piece stands exactly vertical or at zero degrees, the current is then broken at the lower value. With the adjustment such that it is broken at the end of its swing as the device is normally arranged the current wave is then broken where it has reached the value of .231 amperes, and that is 977 at the end of the angular movement from the vertical to about 15 degrees.

Therefore, this upper and lower current value line represents the point on the curve of current, or the space on the current curve within which the most effective spark for ignition is secured.

Experiment has shown that within this space there is a space of four degrees within which the maximum power of the engine is secured.

I find by experiments with this same device by means of the Prony break test on a Fairbanks-Morse engine equipped with this Type B magneto, that the maximum output of the engine is secured when the breaking of the contacts occurs at six degrees from the vertical, considering now the angle which the yoke or spring gripping member makes, to the point where the break occurs at ten degrees. There is a space from six to ten degrees of angular position within which the maximum power of the engine is secured, and as the break occurs on one side or the other of that four degree space the power of the engine falls off to a degree of ten or fifteen per cent. and if you went far enough it would fall off to a greater extent.

I refer to another chart which I have had made showing in diagram the various angular positions of the yoke which occur with the type B device.

It will be noted that I have shown at E the operating arm of the moveable electrode in full lines in the position which it is in when the contact points of the electrodes are new and not worn down, and adjacent thereto, in dotted lines, the position which this operating arm assumes when the contacts are worn to their extreme limit or nearly so.

978 In other words you will observe that as these contact points wear away the arm of the moveable electrode which is within the engine cylinder gradually changes position so that when at rest, as the contacts wear, the outer operating arm of the moveable electrode rests normally nearer to the striker of the yoke member; and that range of position of the electrode arm is such that when the contacts are in their normal new condition the striker of the yoke engages the operating arm of the moveable electrode. When the yoke is at an angle of fifteen degrees. The dotted curved lines which I have shown between the strikers and the electrode arm *e* indicate the angular position corresponding to the angular positions of the yoke. In other words I have shown at the upper side of the yoke lines bearing degree indications and the extreme line to the left, marked "15 degrees" indicates that the yoke has a fifteen degree angle from the vertical at the time its striker is engaging the electrode arm *e* under the condition of new and unworn contacts.

Similarly the line marked "4 degrees" indicates that when the striker arm is engaging the electrode arm under the condition of worn contacts that the angle which the yoke then has is four degrees from the vertical.

So that corresponding to the wear of the contacts the striking position works over a range of four degrees, to 15 degrees, or eleven degrees; and that represents the range which would be indicated by a line somewhat above the lower current value line indicated as .046 amperes on the oscillogram that I have made reference to.

This lower line as I stated before is the current value present when the break occurs with the yoke arm exactly vertical.

979 As this is not the condition reached in practice, the range and practice instead of being fifteen degrees, as I have indicated on the oscillogram by the upper and lower current value lines—instead there is only a range of eleven degrees because the electrode arm cannot assume a position such that the striker will engage it when in the zero degree or vertical position.

And the Court will understand that this same angular variation at the different striking positions which I have indicated with respect to the yoke applies likewise to the angular displacement from normal of the inductor to which the yoke is secured.

To come now to the question of the effect of a change in phase relations—

Q Before you do that could you just indicate on this defendants' Exhibit B apparatus just what you mean when you speak of the range within which operation can be secured and so on. I don't mean to make the explanation elaborate, but simply to point here to the parts and without attempting to get the degrees exactly, with your hand just indicate what you mean by the range of operation

A I think I can show this best by temporarily removing the magneto itself from the bracket. (Witness does so.)

Looking now at the bracket with the magneto temporarily removed it will be seen that the parts now exposed correspond in position and dimensions to the chart which I have referred to, and which chart is marked "Diagram defendants' device Type B illustrating angles of striking."

This chart is drawn twice the natural size; that is two inches on the chart represents one inch in the actual device.

980 It will be observed that the rotor arm, or rather the operating arm of the electrode, is in the position just as shown in the diagram and that the yoke with the two pins to which the driving springs are attached stand normally in the vertical position. It will also be observed that when I turn this yoke by hand in the direction of the operating arm of the electrode that it has to be turned through about fifteen degrees in order to engage the operating arm of the electrode and separate the contacts. And this dotted curved line, or those dotted curved lines, bearing the marks, four degrees, six degrees, ten degrees and fifteen degrees, represent various angles at which the electrode arm may be struck by the striker in the operation of the device, the four degree point being the point at which the striker arm will engage the electrode arm, assuming the contacts to be worn down about as indicated by the dotted lines in the chart to which I have referred; and therefore the operating range of this device is mechanically limited to a range of eleven degrees of angular position.

Now referring to that angular range I should also state that experiments have shown that when attempting to start an engine with this magneto under favorable conditions, that is with a good mixture, the engine warm, and indoors, that the engine can be started by the spark from this machine over the entire striking range of fifteen degrees, that represents

the possible range, although the first four degrees are never secured in practice with the electrodes and electrode arms which are present.

It is further found, however, that when attempting to start the engine with this magneto under somewhat adverse conditions, that is outdoors, with the engine cold, that difficulty in starting is encountered when you get outside the range of four degrees, to about fourteen degrees—in other words if this striker engages the electrode arm when it is less than four degrees from the vertical and when the inductor is correspondingly out of normal position we get difficulty in starting due to the poor quality of the spark; and that at the same time, under similar adverse conditions if we attempt to start the striking at an angle of fifteen degrees we get a difficulty which is not present when striking at an angle of about fourteen degrees, and there again it is a matter of the quality of the spark in its effect to ignite the charge of the engine when the engine is cold or possibly with a poor mixture.

That is merely one more illustration of the fact that you not only have to have a spark, but you have to have a good spark.

Q What does it indicate in that connection as to the necessity of maintaining a given adjustment or relationship as between the parts?

A Well, that goes back to what I said in my direct testimony that one of the advantages of the unitary device is to make it what I have called self-synchronizing; in other words, when put together with the unitary frame for which it is intended it assumes the correct relation between the magneto and the electrode contacts and maintains that relation, when on the engine and when off the engine, and produces a device which can be taken from the engine and operated at the same velocity and in the same operating manner as when on the engine and allow observations of the spark under actual operating conditions so far as the relation between the generation of the correct and the breaking of contacts is concerned.

982 Now, to go back to this question of this phase relation, and referring to Diagram B, defendants' device Type B—

Q Are you going to take up now the question as to how the phase of the current is changed?

A I am proposing to show why the change in phase relation even though it may not be a very considerable change in

terms of degrees, nevertheless, is a more important factor than Mr. Vandeventer seemed to believe.

I think that will be recognized by reference to this diagram showing the current curve produced by the machine.

I have pointed out that the point in the current curve at which interruption of the circuit will produce the most effective spark is a point, or a space of very limited range. That is to get the maximum of power from the engine you must work within a four degree range of angular variation, and that represents but a small space up and down in the current curve, or change of value in the current curve. And I pointed out to get the most satisfactory starting you must work within a range of four to fourteen degrees, or a space on this curve which may be represented by something less than a quarter of an inch, on the vertical line of the current curve, line C on this diagram.

It will be recognized that by reason of the rapidly rising characteristic of this current curve that a very slight change in phase relation will throw the time of breaking the contact entirely outside of this most effective breaking point.

For example if we were to add to this diagram another curve representing the current slightly advanced in phase over that which is shown it will be seen at once that a very slight difference in phase will have the effect of throwing the breaking point of the electrodes or the time of breaking the electrodes entirely outside of this most effective point or range to which I have referred. A change in phase relation of ten or fifteen degrees might have the effect of making the difference between an effective spark and one which would not deliver the maximum power or would not even effectually start the engine under somewhat adverse conditions.

Q Now can you state whether there is such a change in current phase as between spring operation and hand operation, and indicate why? And if you can whether the degree of change in current phase relationship as between spring operation and hand operation would be such as to destroy the indication as to spark effectiveness.

A There is necessarily a change in phase relation of the current wave with respect to the breaking point of the electrodes as between hand operation and spring driven operation, for the reasons which I have stated. And it is my view that this change in phase relation is such as to make the spark which is secured by hand operation an entirely unreliable in-

dication of the character of spark to be secured under spring driven operation.

This conclusion is based not only upon reasoning and analysis and experience but upon experiments which I have made to show the effect of such change in phase relation with change in velocity.

Mr. Williams: We offer in evidence the Weber apparatus, the Weber model as produced by this witness and ask that it be marked "Plaintiff's Exhibit No. 76"; and that the oscillogram produced by the witness be received in evidence, and that it be marked "Plaintiff's Exhibit No. 77." We also offer the chart referred to by the witness and entitled
984 "Diagram defendants' device Type B, illustrating angles of striking" and ask that that be marked "Plaintiff's Exhibit 78."

(Said exhibits were then received in evidence, marked respectively "Plaintiff's Exhibits 76, 77 and 78", and said exhibits 77 and 78 are as follows, to-wit:

Q Will you now refer to the Wattles patent 909264, and explain briefly the purpose and effect of the spring mechanism connected between the cam marked 3 in Fig. 1, and the magneto itself, and state what the effect of this spring and cam operated mechanism is; and whether there is shown in the Wattles patent a unitary magneto igniter equipment in any sense, or in any such way as to enable it to be removed from the engine and operated under conditions simulating those of engine operation?

A Referring first to Figs. 5 and 6 of this exhibit, patent 909264, the Wattles patent, it should be explained that the actuation of the magneto under gas pressure, or under the compression pressure of the charge in the engine cylinder, is intended to be controlled by means of what is described as a valve device, 21. As long as this member, 21, is in its seat in the chamber within which it moves, the gas pressure is presumed to be ineffective to operate the magneto. The spring 55 and the linkage represented in Fig. 1 forms a flexible connection between the cam rod 56, and the upper links which are used to move the magneto, with its actuating plunger and valve member, 21, to the seated position, that is to the position in which it must be before being operated by the pressure of the charge in the cylinder.

Under this seated or set condition the spring 55, as I understand the device, exercises some slight pressure where-
985 by the valve member, 21, is maintained in its seat. When

the valve rod, 56, is dropped or moved downward, through the action of the member, 3, in its rotation this slight spring pressure is relieved sufficiently to allow the pressure of the gases in the cylinder to act with the intention that the plunger or piston, 19, will then move outwardly rocking the magneto armature with sufficient accuracy and velocity to create a suitable spark for igniting the charge. This linkage, including the spring, 55, and the bell crank, 45, 48, with connecting members 44 and 43, is thus an essential part of the ignition device. And because of this it is obviously impossible, of course, that the device could be operated when removed from the engine cylinder in any such way as it is presumed to operate when in place on the engine cylinder.

Furthermore it is of course obvious that when removed from the engine cylinder the absence of any connection with the compressed charge in the cylinder renders the device devoid of any driving means whatever for causing its spark operation.

For these reasons I regard the device as one which is not in any sense a unitary magneto ignition device, such as is the device of the Kane patent in suit.

Q Where do you understand that the parts shown in this Wattles patent at 45, 48, 52, 55, 58 and so on, would be mounted when attempting to equip the engine with this mechanism?

The Court: I don't care to spend much time on this patent. It has an entirely different mode of operation.

The Witness: As indicated in Fig. 9 of the Wattles patent, the part, 51, that is the downwardly extending rod carrying springs 58 and 55 is slidably supported in a bracket

bolted to the engine cylinder or frame at one point, 986 while the bell crank member with associated levers, 44,

43, 45 and 48 are supported on the boss or pin indicated at 46, as found on the engine cylinder at another point.

Q Mr. Carter in his testimony, in referring to the Milton patent, 1053107, and to the Hennig patent, 916312, said among other things that if the magneto shown in the Milton patent, or if the magneto shown in the Hennig patent were mounted on the shelf, were bolted on the shelf of the Weber patent, instead of the style of magneto which Weber actually shows, then without any change whatever in the mode of operation the device would not only have a unitary feature as to the magneto proper and the ignition block, but would have the self-contained spring arrangement. Can you find in these

patents anything which shows or suggests such a substitution?

A I find that I have no copy of the Milton patent at hand.

The Court: What is the number of it.

Mr. Williams: 1053107.

The Court: Here is a copy.

The Witness: Will you read the question please.

(Question read)

Mr. Williams: Or how it could be made. I think I will add that.

A I cannot, but on the contrary the Milton patent and the Hennig patent to which you refer are directed to and suggest quite the contrary arrangement, that is one in which instead of securing direct engagement between the striker arm rigidly related to the magneto and an operating arm upon the moveable electrode, they instead point to and necessarily imply the older type of device in which there is a connecting rod extending between the rotor of the magneto and the operating arm of the electrode and in which the ignition block and magneto are located at entirely distinct and separate places with respect to the engine structure.

987 Q Mr. Carter during his testimony referred to the patents of Olds, Cooper and Dickinson, showing battery igniters, and said: "Now I do not know that it is particularly worth while to go into the details of these three patents. They simply show different styles of battery ignition devices which correspond with this plaintiff's exhibit defendants' machine Type A, when the magneto is removed from it, and they show devices to which a magneto might be applied just as a magneto can be applied to plaintiff's exhibit defendants' machine." Will you state whether there is in these patents anything to suggest the application or the substitution of a magneto, or anything to suggest how it could be done; and you might go on and state whether such a magneto could be applied to these devices in so far as you can see.

A No one or any of these patents, or all if them suggests such a unitary magneto ignition device as is disclosed in the Kane patent in suit. They are merely the old battery ignition device used for many years, and long prior to the Kane development.

Mr. Carter did not indicate in what manner it would be possible to unite the magneto generator with any one of these

devices and I see no way in which it could be done without a very material change in what is disclosed in them.

It seems obvious that it would not be possible to attach any existing magneto to any one of these devices and secure a unitary arrangement by means of anything suggested in any one of these patents or without an entire reorganization of the structure.

Q Do any or all of the prior art patents which were referred to during defendants' proofs, or offered in evidence by the defendants, disclose or suggest the Kane invention in a structure, mode of operation or result?

A They do not.

Q Will you refer now to Kane patent number 1204573 and explain your understanding of the disclosure of that patent as to an engaging surface between the striking part and the electrode arm?

988 A My understanding of the disclosure of this Kane patent 1204573, with reference to the point you mention has always been that the anvil member, 29, that is the broad-headed screw extending downward through the operating arm 27, and the moveable electrode, was engaged by a curved surface of the yoke member of the device. That understanding has been based I think particularly upon the fact that there are projecting portions, 30, of the yoke member, as illustrated in Fig. 2, which are clearly cylindrical in form and my understanding has been that this cylindrical contour extended to or beyond the point of engagement with the anvil member 29.

The Court: That is not very clear in the patent.

The Witness: The point of engagement is concealed in the drawings of the patent, but my understanding has been that these cylindrical members continued in cylindrical form to the point of engagement; and that I believe is a reasonable assumption.

Q Do you recall the substance of Mr. Carter's testimony upon the question as to whether defendants' machines, types A and B, disclose the subject matter of claims 2 and 3 of the Kane patent; and particularly his testimony relative to a difference in the place with which the ends of the driving springs were connected as between the defendants' device and the Kane patent; and also with respect to the pin and block connection between the yoke member of the rotating member of the defendants' machines and his comparison of the language of the claims with this defendants' structure.

A I think I have a fair recollection of his testimony on those points.

The Court: He practically admitted that it was only a difference of position.

Mr. Williams: You mean Mr. Carter.

The Court: Yes. No difference of function anywhere that I could see. He didn't talk about any. The only difference of function that he spoke about was in respect to some other change in the—

Mr. Williams: As I recall it he pointed out that in view of the fact that there was a joint or this connection between the rotor and the yoke member, that in this device, the defendants' device, the magneto could be removed in such a way as to permit what is left to be used for battery ignition.

The Court: Yes that was the only difference he suggested, the only different operation he suggested, when that change was made. That is all I recall.

Mr. Williams: Q Let me ask you this question, whether the fact that the defendants' magneto can be removed, as was just suggested here, alters in any way the function of the defendants' equipment in conformity with the subject matter of the claims of the Kane patent when the device is assembled complete with the magneto.

A Such possibility of the removal of the magneto from the shelf portion of the frame does not in my opinion afford a reason for concluding that there is any difference in the functional relation of the parts, when the magneto is in place on the frame over the functional relation and operation of the parts correspondingly found in the Kane patent.

The mere fact that a coupling has been introduced between the yoke member of the rotor and the armature of the rotor does not in my opinion change the function of the device so far as the Kane patent is concerned.

Q Will you say whether or not the same answer applies as to the different points at which the outer ends of the driving springs are connected?

A The same statement applies with respect to the manner in which the driving springs are supported. The essential relation in respect to these driving springs is that they shall be rigid with respect to the magneto itself and shall hold the rotor of the device in a predetermined position with respect to the field frame of the machine.

The fact is they are not directly connected with the field

magnets, that does not in my opinion make any difference so far as the claims are concerned.

Mr. Williams: That is all.

Cross-Examination by Mr. Mason.

Q Have you made any oscillographic tests on any other makes of machines than those made of the Sumter and Webster Electric Company machines, I mean in magnetos of this character.

A Other than those made by the Sumter, Splitdorf and Webster.

Q Yes.

A I don't now recall that I have.

Q You have not recently.

A No, not recently.

Q How many Sumter magnetos did you test in making the oscillograph test?

A Only the type B machine to which I have made references.

Q Only one machine?

A Only one machine of the Sumter Company.

Q Where did this machine come from?

A My understanding is that this machine was one purchased by the Webster Electric Company in connection with the purchase of the Fairbanks-Morse engine upon which the machine was mounted and for which it was furnished.

Q Is that machine an exhibit here in court now?

A I don't think it has yet been introduced as an exhibit, but the machine is here and I can identify it if you wish to have it.

Q It is not one of the exhibits, is it?

A Not yet.

Q Do you know that this machine is in the exact condition that it was when it was sold by the Sumter Company, the Splitdorf Company?

A Only by reason of my observation of its operation upon the engine for which it was sold. Its operation was such as to lead to the conclusion that it was in the same condition as when sold.

Q You do not know then that it is in the same condition as when it was sold, but you just infer that it was from the fact that it was on the engine with which it was sold.

A Perhaps it would be correct to call it inference. I observed that it operated as it would be expected to operate on such an engine.

Q You speak of the magnetic lag as being an element in determining the time when the moveable electrode should be open or separated from the fixed electrode, do you not?

A Yes, sir.

Q That lag is caused by the slow rise or change of the magnetism in the core of the coil, is that right?

A By the fact that the change is a gradual one rather than an instantaneous one.

Q How long a time elapses in the change in the period of induction—in a magneto I mean?

A I don't know that I quite understand what you mean or what you are referring to.

Q This change in magnetic force you say extends through a period of time. It is not instantaneous.

A The rise of the current is not instantaneous.

Q I have reference to the effect of the current—of induction on the current which is generated by the magneto, and to what is the maximum time that that induction takes, which I understand is a counter force set up in the core of the electric coil which affects the phase of the current, and you say that is not instantaneous but extends through a period of time. Am I right?

A Yes, sir.

Q How long a time is that about?

992 A That depends entirely upon the structure.

Q It varies in different magnetos, does it not?

A Yes, sir.

Q Is it thousandths of a second or a whole second, or what?

A For purposes of illustration I refer to this "oscillogram B, defendants' device type B." The change in the magnetic condition of the iron, which is I presume what you have reference to, is occurring throughout the return swing of the rotor as indicated by the period of time represented by the space between points 2 and 3 of this oscillogram. The time within which such change takes place is as indicated here a trifle greater than 10/1000ths of a second.

Q You are talking now about the current curve?

A No I am talking about the change in the magnetic condition of the iron.

Q Which causes the rise in the current curve?

A Which acting in conjunction with the current in the electric circuit causes the rise in the current curve.

Q Am I not right that the changes in the magnetic force through the coil produces this current rise and that takes a certain period of time?

A Yes.

Q That is what we are talking about.

A Those changes are opposed, or there is a tendency to oppose those changes by the current which circulates through the coil as the result of those changes.

Q Now in this oscillogram defendants' device type B, plaintiff's Exhibit No. 77, does the current curve there show any effect of the lag or this counter induction or counter force on the current curve?

A Certainly.

Q Any more than you have a regular form of curve there?

A The very fact of the form of the curve shows the presence of that reaction.

Q Sure, but it does not show just what the effect was, more than the resultant action? Isn't that so?

A I don't think I know what you mean. I don't think I get your point.

Q It is the magnetic force passing through the coil, and this counter force due to the induction that produces the current curve is that right?

A If I understand you it is.

Q There is nothing here to show where the lag begins to effect it, or where it ceases, or anything else, or what causes it?

A The oscillogram to which you make reference does not show a lag. It merely shows the position of the current curve with respect to the time of swing, and not a lag which would result from some different time of swing. The curve itself indicates of course that there is some lag between the time of starting the motion and the resultant current.

Q The effect of this lag or counter force varies not only in different machines but in machines of the same make does it not.

A It would be apt to, yes sir.

Q If I understood you correctly, the electrodes must be separated at pretty definite times in connection with the current rise as indicated by curves in the oscillogram?

A More strictly speaking at pretty definite times the

change in the magnetic condition of the iron of the device is indicated by the rise in the current curve.

Q In defendants' Exhibit 46-a, oscillogram of current curve of plaintiff's device, the current rise is very rapid to the maximum, is it not, and then drops off quickly?

A Yes.

Q And in the oscillogram, defendants' device, type B, No. 77, the current rise is more gradual and remains at the 994 maximum for a longer period of time, and then drops off; is that right?

A Viewing these curves as representative merely of current curves and without regard to the time interval or the angular interval throughout which a spark may be produced effective to secure best results in the operation of a gas engine, I should say that your statement was true.

But these curves show or at least indicate that the angular variation of position of the inductor as well as the time interval throughout which an effective or best spark can be produced is practically the same in the two devices.

Q Does not the curve of defendants' type B show that the time interval is considerably longer in which you can get an effective spark.

A You are referring now I take it to the entire interval occupied by the rise and fall of the current curve. I have pointed out in my direct testimony, or attempted to do so at least, that to secure an effective spark there was one certain position of the iron or condition of the iron as indicated, or as might be indicated on this current curve, at which the break must occur to secure the best and most effective spark. Now that position and the time involved and the angular variation involved is substantially the same as in the two devices.

Q Isn't it a fact that in defendants' type B they have done away with this adjusting screw to get this nicety of adjustment of time in opening the electrode with the movement of the armature?

A The very fact that they have done away with the adjusting screw is one of the reasons why it is most essential in that device that they should have a nicety of position of the magneto and its parts with reference to the igniter.

My investigations show that if you change the position of the magneto, or rather if you vary the position of the center about which the electrode arm rotates with respect to the

center about which the yoke rotates, either way cause a separation of these two centers or bring them closer together, as may be best seen by reference to this chart, diagram, device B, illustrating angles of striking, such variation will result in diminishing the effectiveness of the device.

Referring to this chart the actual horizontal dimension between centers to which I have referred is approximately .9218 inches. If that dimension is decreased it will be apparent that with worn contacts the striker of the yoke will engage the operating arm of the electrode before it has reached the four degree point, or the six degree point, at which the most effective spark is secured. On the other hand if that horizontal dimension is increased, as if the yoke were moved farther away from the operating arm of the electrode, you create a condition that in order to strike the electrode arm with new contacts, the striker must strike at a greater angle than fifteen degrees, which is outside the range of the most effective starting or operating.

Q Do you mean by that that those points wear in defendants' device and it soon becomes inoperative?

A Not at all. By means of the Kane improvement you have so precisely located that device that you can still operate with a range of wear of contacts within the capacities of the device.

Q Now what do you mean by the Kane improvement? The unitary bracket?

A The unitary type of construction.

Q Anything that would preserve the synchronism you speak of, that would permit the adjustment of the one to the other would accomplish the result, would it not?

A Provided you also had a device in which the velocity of the spring drive also remained constant, the things that work together. If you change the driving force of the spring or the relation of the spring to the device you change the phase of the current and thus the effectiveness of the breaking point of the electrodes. And similarly if you displace the rotor arm with respect to the electrode arm.

996 Q That would occur in any device, would it not, if you change your springs you get your changes?

A Of course you would get changes if you change any one of those elements; if you change them you do get changes. One of the advantages of the Kane device as I see it is in preparing a unitary structure in which those changes do not occur.

Q I mean the tension of the spring remains substantially the same in any magneto? They don't change the tension of the springs after they are once put on the machine?

A What magnetos are you referring to?

Q Take the Milton magneto?

A In this device no, because you have that unitary relation.

Q Take the Milton magneto, not mounted with the unitary arrangement, the tension of the spring remains the same does it not?

A Which magneto are you referring to now?

Q This Milton magneto, plaintiff's Exhibit 11, the tension of the springs in this device which operates with the rotor are always the same; they are not changed in any way?

A No. In this case you will have a magneto in which the driving springs form part of the magneto and maintain their adjustment. But in this case also you have a device in which you do not maintain the relation between the spark electrodes and the magneto.

Q The same is true of that Hennig patent that has been offered in evidence?

A So far as the driving springs are concerned.

Q What is the speed of the rotor in revolutions per minute through the action of the springs? Have you any idea?

A In which device?

Q In the Milton magneto mounted on the unitary bracket that has been offered here in evidence.

A I never measured that. I should judge it might be, 997 at least during part of its swing, at a speed which would represent 700 or 800 or 900 revolutions per minute, or very possibly less.

Q Did you ever measure the speed at which the armature works in any of these oscillators?

A Yes, sir.

Q At the time when it breaks?

A My tests would not show the exact speed at the instant of breaking, but they do show the time required to swing from the tripping position to the breaking position, and of course an average speed throughout that arc of movement at least.

Q I suppose that would vary in different machines according to the tension of the springs somewhat, and as to the—

A Yes, and the fact as to whether there was any linkage such as in this Hennig patent to which you refer, the presence

of such linkage would materially reduce the speed unless the strength of the springs was very materially increased.

Q Will you explain, just briefly now, what change in the current phase occurs when you change the speed of this rotor?

A You mean the nature of the phase change?

Q In your oscillogram what was the difference? What I am after is this: Is it just the intensity of the current rise or does the peak shift?

A There is an actual shifting of the rising portion of the curve, and of the peak with reference to the time of breaking the circuit.

Q What causes that?

A The cause that I have in mind in answering the question is the change in velocity.

Q Did you ever make an oscillogram operating a magneto by hand?

A No, sir, I never did.

Q Do you know anything about the speed you could get by hand in a nicely adjusted magneto?

A Not by any actual test; only by my judgment and 998 opinion, which is that you would not reach the speed which you get with driving springs connected with the particular magneto under consideration.

Q Would you approximate it?

A I would not attempt it, no. There is too much of a personal equation.

Q Did you not say that the spark produced by hand operation would not be within ten per cent of the spark produced with springs?

A I said it might not be within ten per cent.

Q You don't know do you really?

A Not in percentage, that was again a matter of judgment.

Q When you take the device off the engine and operate it you do not get your sparking conditions that you get in the cylinder with the gas under compression do you?

Mr. Williams: What machine are you talking about?

Mr. Mason: On any of these machines, any of these magnetos machines of a low tension type.

A So far as the time of production of the spark is concerned, and the apparent effectiveness of the spark is concerned in a low tension magneto you do get the same conditions when breaking the contacts under compression as you

do when breaking them in the open air, although there is the possibility that the spark might quench quicker under compression. But possibly you have in mind the fact that in the jump spark system there is a difference between sparking in the air and sparking under compression. But that difference I do not believe applies to make and break ignition.

Q If you were sure your parts were in synchronism when you had it off the machine, and you put it back on the machine you would be pretty sure your synchronism was right?

A What are you assuming as evidence of synchronism in that question?

999 Q What I mean is with your armature or rotor springs away from its pull piece at the proper time to produce the spark with the electrode open. In other words, you take the magneto off the engine and operate it, and you see that you have the spark, and if you put it on the engine you are sure you are going to get the spark; is that right?

A No, not as you express it.

Q Well, as to timing. That's what I'm talking about. I am talking about where it is spring driven. If the device is operated off the engine with the same spring tension and with the same relation of parts as when on the engine?

A If the device is operated off the engine with the same spring tension and with the same relation of parts as when on the engine and I get what appears to be an effective spark I would then expect to get that same spark when the unitary device is replaced upon the engine.

Q How do you tell that you have got an effective spark? Just by your eyes?

A It is difficult somewhat to tell when you have secured the most effective spark.

Q You merely know that you have got a spark?

A No you don't. It is not merely getting the spark but you can tell if you get a good spark; whether you are getting a good spark or not, but you cannot tell how good it is.

Q What do you mean by good spark?

A What we would call a fat spark. It is hard to describe the appearance of a spark which apparently is one which will secure good ignition, and it may be that that very fact illustrates one of the advantages of the Kane device; you have got your— In the Kane device you have got your synchronism,

your angular relation, and your spring driving tension established and maintained.

Q Did you not notice Mr. Carter yesterday in this illustrated device of the Weber patent, that he took the magneto off with the spark plug and he operated it without the spring and got a spark?

A Yes, a sort of a spark.

Q Well, it was a spark, was it not?

A It was not a spark that I would call an effective or very good spark.

Q As to intensity, but as to the timing of the spark, it was such that as to the movement of the rotor the field was in such a position that when the electrode was opened there was a spark produced?

A There was a spark produced.

Q And then when he put it back and operated it by the springs he got a spark, the intensity was changed?

A Considerably fatter spark, as I viewed it.

Q When it is operated by hand the arm of the rotor strikes the movable arm,—the arm of the movable electrode at just the same time as it does when it is operated by the spring, does it not?

A What do you mean by just the same time?

Q I mean the rotor is in the same position relative to the field pieces,—when it strikes the arm of the movable electrode, when it is operated by hand as by springs.

A It is in the same angular position.

Q Yes?

A But it is in an entirely different position with respect to the magnetic condition of the iron at the time the break occurs.

Q How do you know?

A By the fact that the change in velocity makes a change in phase. You have a displacement or change in phase and a good spark when operated at low velocity might not be a good spark when operated at high velocity.

Q How much change is there in phase?

1001 A In phase?

Q Yes. Isn't it something you have to measure with the very sensitive instruments in a laboratory?

A Not to get the effect of it as a practical thing.

Q How do you tell?

A One of the best illustrations is the Prony break test, which shows that; you have got to make that break to get the maximum power of your engine, you have to make that break within an angular operation of about 4 degrees of your rotor.

Q I am speaking particularly as to the condition of the spark between the hand operation and the spring operation.

A Well, I am trying to explain to you why it is not a theoretical proposition but a practical one; a very slight change in phase relation will be sufficient to throw that 4 degree point entirely outside, one side or the other, of the time at which your electrode contacts separate.

Q Isn't that the time in the comparison with the ignition in the engine cycle?—

A Not at all.

Q That you are speaking of?

A No. It is the relation between the magneto and the electrode contacts.

Q Isn't it a fair proposition, Mr. Webster, that if you take this magneto off and operate it by hand you see you have got a spark because the parts are timed so that the armature is going to break away from the pole pieces just as your electrodes open to get the spark,—that when you put it on and operate your spring that you are going to get a good spark?

A No, it is not.

Q Didn't it do it here in court?

A No, it didn't.

Q Why, he took it off and operated it and it sparked?

A Oh, there is a difference between a good spark and
1002 an effective spark.

Q How can you say that the spark was not a good spark when he put it on and operated it by the spring?

A I didn't say it wasn't a good spark; I said the spark he got when it was off wasn't an effective spark.

Q It wasn't as fat because it wasn't so intense, but the spark was there?

A The fact is, Mr. Van Deventer, that if you operate it by hand— The fact is that if you operate it by hand, just for a spark it will give you the best spark under that method of operation; then when you drive it at a greater velocity by

spring tension, you won't get the best spark because of the change in phase relation.

Friday, February 7, 1919.
2.15 o'clock P. M.

Webster }
vs
Splitdorf }

Court met pursuant to adjournment.
Present same as before.

H. G. WEBSTER resumed the stand:

Cross-Examination (Continued) by Mr. Mason.

Q Mr. Webster, I believe you have testified that this magneto in Defendant's Exhibit No. 52, could be taken off and adjusted so as to be operated by hand to produce a spark and yet, when you put it back on, it would not necessarily, when operated by a spring, it would not produce a spark.

The Court: No.

1003 The Witness: No; I have not testified to that effect at all.

The Court: A different kind of a spark.

The Witness: What I have testified to is that the spark you might get when twisting it by hand would not be an indication of the best adjustment for a spark when operated on the engine.

Mr. Mason: Q But it would indicate when operated that way that you would get a spark on the engine?

A Some sort of a spark, yes, possibly.

The Court: That is on account of the change of phase?

A Change of phase, change of angular relation, change of velocity.

Mr. Mason: Will you restore the parts of this Plaintiff's Exhibit No. 76, illustrative of the construction of the Weber patent. Will you restore them?

(A brief intermission was taken while the witness complied with Mr. Mason's request.)

The Witness: I have now restored the parts of the device as you requested.

Mr. Mason: Q Will it make a spark?

A Yes, I got a spark.

Q That spark is all right?

A I don't know.

Q Can't you tell by the looks of it?

A No, I can't tell by the looks of a spark whether you are getting the best spark. It looks like a pretty good spark.

Q It looks like a good spark, does it not?

A (Operating device.) I don't think that this is as good a spark by far as was secured with the original adjustment of it.

1004 Q How can you tell, if that spark there is not just as good, how do you know that this other spark with this other device, Defendant's Exhibit 52, is a good spark? You did it by inspection, did you not?

A By observation.

Q Yes.

A I am giving my opinion of the relative characteristics of the two sparks.

Q Yes. In putting these parts together, did you make any adjustment other than to bolt it back on?

A I endeavored to get it exactly in the same position, to get it in exactly the same position that it was when I first operated it, but I don't think that I succeeded.

Q You didn't adjust the little screw there on the arm which takes care of the movement of the electrode?

A No, I didn't touch the screw at all.

Q So that it went off and went back on in a direct synchronism anyhow, and you got a spark?

A I wouldn't want to say it is in the proper adjustment.

Q But apparently you get a good spark?

A I don't think we get as good a spark as we did before.

Q What?

A I am sure we do not.

Q Of course, you are just telling that by observation?

Mr. Williams: That is what you are asking.

A That is what you are asking. That is what you want, isn't it? I would want to put it on an engine to tell whether you are getting the best spark or not.

Mr. Mason: Q How are you going to tell it on the engine?

A By observing the operation of the engine.

1005 Q Every time you put one of these igniters on you have got to put it onto an engine and operate it to determine whether or not it is giving a good spark; is that the idea?

A Yes, sir, with the one you have, yes, sir, with this Weber device, that is what you have got to do.

Q Did you ever see a Weber device?

A I have seen this model and your model.

Q You never saw one on an engine, did you?

A No.

Q As I understand it, in this Defendant's Exhibit No. 52, you would be willing to admit that when it is operated by hand you get a spark, and when you operate it by a spring there will be a spark?

A Yes, sir.

Q But when you operate it by the spring you get a better spark than when you operate it by hand, do you not?

A Because of the increase in velocity and under normal operating conditions you will, of course, get a better spark than by operating by hand.

Q In this device which you have produced here, as illustrative of the Weber patent, the bracket is bolted to the igniter flange; is that right?

A No, the bracket is clamped between the igniter flange and the bolts which hold the igniter to the cylinders.

Q Well, it is bolted to the cylinder, I should have said, instead of to the flange, but by bolts which pass through the igniter flange; is that right?

A The bolts which pass through the igniter flange likewise—

1006 Q Then it is secured to the cylinder?

A —likewise serve to secure the shelf on which the magneto rests.

Q It is secured to the cylinder, is that right?

A When the bolts are tightened, yes.

Q What did you find in the description of the Weber patent that in any way describes or justifies the bolting of this shelf to the cylinder, in the description I am referring to?

A Do you want me to refer to the specification of it?

Q Yes, the description I am speaking about.

A Yes, I understand. (referring to document.) Now, if you will read the question, please.

(Question read.)

A The specification, page 4, line 28, refers to the bracket and igniter block as being fitted to an engine, and, later on in the same paragraph, it refers to the brackets 53 and 31 as having been secured in place. I understand this language to refer to the method of securing, illustrated in the drawings of the patent and as embodied in the model which I have just operated.

Q The description to which you refer stated that it is fitted to an engine in lieu of a similar igniter block. In other words, you take off the igniter block that was normally on the engine and put this device on, is that not it?

A Which device?

Q The Weber device?

A I don't get quite the sense of it that you seem to get.

Q The description says that it is put on there in lieu of the similar igniter block; that is, the Weber construction consists of the igniter block and the shelf which are made at the factory and sent to the place where the engine is, 1007 and then it is attached in lieu of the old igniter block, which used to be there; is that right?

A The specification reads, the igniter block 3, together with the magneto electric machine may be sent with some of the parts connected therewith and fitted to an engine in lieu of a similar igniter block, but I do not understand that that means that the igniter block and the shelf and magneto are shipped as a unit. It might be that they are shipped in the same box, but not necessarily as arranged in the model which you,—which the defendant has introduced.

Q Well, is there anything in that description which would not apply equally to the bolting of the shelf to the igniter flange, such as you find here in Defendant's Exhibit 52?

A Possibly not, if you divorce the descriptive language from the drawings of the device.

Q Now, just what is in the drawings that would show that the shelf is bolted to the engine cylinder rather than secured rigidly to the igniter block as stated in the description?

A The drawings taken together with the description mean to me a construction, as illustrated in the plaintiff's model.

Q Well, why?

A In the first place, as I think I have already pointed out, because the only bolts by means of which the shelf can be

secured in place, are the two lower bolts which are required to hold the flange of the igniter block on the cylinder wall. The drawings indicate that the holes through the flange of the igniter block are smooth holes, and there is nothing to indicate that the two parts are made in one piece; and I see no natural or obvious way of embodying that which is shown in the drawings, other than as in this model of the plaintiff's device.

1008 Q What do you mean by "smooth" holes?

A With smooth interiors.

Q Not threaded?

A That is it.

Q Yes.

A That was what I mean.

Q All right. Of course, patent office drawings just illustrate the principle and are not working drawings?

A Oh, yes.

Q That is right, is it not?

A Yes, sir.

Q These holes are not described; they just indicate the position of them; is that right?

A Simply indicate them, that is all.

Q Then, if I understand it, it is because there are three bolts and holes which are not threaded, in the drawings alone, that seem to indicate to you that the shelf is separate from the igniter and bolted through to the engine cylinder?

A I think there may be something further in the patent. I seem to recall something that impressed me as showing them separately. If you wish me to, I will look for that.

Q All right.

A (Witness referring to specifications.) What I had in mind was the language of the paragraph previously referred to, appearing on page 4, line 17, which refers to the horizontal bracket, 53, having a vertical flange, 54, as something separate from the igniter block, 3 and where the language says, rigidly, or, "securely rigidly" to the igniter block. I understand that as meaning when assembled on the engine.

Q But you don't find that in the description?

A I am reading from the description.

1009 Q I mean in the—

A I am giving you my understanding of the description.

Q I see. Doesn't that apply aequally well to the device here,

Defendant's Exhibit 52, where the shelf is bolted to the igniter flange?

A Not when you view the language in the light of the drawing to which it refers, in my opinion.

Q Then it is really the drawing which impresses you that they ought to be separately mounted?

A No, the two taken together.

Q But there is nothing in the description which is contrary to this construction which we have here in Defendant's Exhibit 52, so far as the mounting of the shelf on the flange of the igniter?

A Only as I have stated.

Q Referring again to these holes, Fig. 2, the opening would be an end view; would it not?

A It is described as an inside elevation view of the drawing.

Q I am speaking of the holes through the flanges; you would look at the ends of the holes, would you not?

A Yes, sir.

Q Where the bolts go through?

A Yes.

Q If that was threaded, how would it appear different from the way it is shown there, so far as the full lines are concerned?

A In mechanical drawings, a threaded hole is ordinarily indicated, or frequently indicated by a dotted line surrounding the—or a dotted circle, I should say, surrounding a full line circle, and sometimes there is a little shading shown.

Q That is true, but this is not a mechanical drawing?

A No.

1010 Q Or a working drawing?

A No.

Q So far as patent office drawings are concerned, that would just as well indicate a threaded hole as a non-threaded hole, is not that right?

A No, it would not; because those holes represent the holes for the bolts by means of which the flange is bolted to the engine cylinder, and they could not be threaded holes if they were to be used in that way. You have got to have smooth holes there, in order to use those bolts, bolt the igniter flange to the cylinder.

Q We are talking about what we can get from the drawing itself.

A I am telling you what you get from the drawing itself.

Q You are construing the—

A I am regarding the drawing and language as a whole.

Q You are construing the drawing, of the way you understand it is mounted?

A Yes.

Q I am asking what you find in this figure that would indicate—

A I am looking at Fig. 2 as illustrating one side of the igniter block, the flange, and look at the holes as the holes through which bolts must pass to bolt that flange to the cylinder. Now, in that view of it, those holes could not be threaded holes.

Q If the two lower unthreaded holes were threaded, would the drawing be any different for Patent Office drawing purposes?

A Decidedly so.

Q How?

A Because you would then have but one bolt to hold that flange in place. It would not answer the purpose. You
1011 have got to have three bolts there.

Q I am asking you about the drawing, the Patent Office drawing; would the showing here in this Patent Office drawing be different if the two lower holes were threaded?

A I will say it might or might not be. My opinion is that you have got to have smooth holes there in order to do what they have done, to have the structure, to which this drawing, which this drawing sets forth.

Q Will you state what ways this upstanding flange might be secured rigidly to the flange of the igniter plug from a mechanical standpoint; how could you secure that rigidly?

A As the device is described in the patent drawing, I see no way to secure it rigidly, except as illustrated in this Plaintiff's model.

Q I am asking you—

A By clamping it under the heads of the bolts which are used to secure the flange of the ignited block to the cylinder.

Q What ways are commonly used for rigidly securing two metal parts, beside bolts?

A You wish me to consider other ways?

Q Yes.

A It might be riveted to it, it might be welded to it. It might be—there might be bolts provided, separate bolts provided to fasten it to there.

Q Is there anything in this description which would be contrary to such a construction of welding this flange of the shelf to the flange of the igniter plug, in order to secure one rigidly to the other?

A Yes. They are described as separate parts.

Q But if they are made separately and welded together, could they not be rigidly secured that way?

A That would not be in accordance with the disclosure of the patent, as I see it, if so made.

Q Do you find any description there that would negative the fact that that might be the means of securing one to the other?

A Yes, when you view the description in connection with the drawings.

Q Then really, it is the drawings which lead you to—

A No, the two together.

Q I believe you said that one bolt could not be used to secure the igniter plug to the engine cylinder?

A Not with the—

Q Not with the what?

A Not with the separate igniter plug which is shown in the Weber patent.

Q It would blow off, is that what you said?

A Very apt to, or break.

Q You never had any experience in that line? You don't know, do you, more than judging that that is what would happen?

A It is largely judgment.

Q I believe the testimony that has been taken in this suit has been to the effect that this Milton magneto, Defendant's Exhibit 11, wherein the magneto is mounted on the boss, gave trouble, because the magneto shifted on the boss. Is that your understanding of the testimony?

A I think that that was, part of the testimony was to that effect. I don't remember whether that comprehended all of the difficulty.

Q By reason of this magneto shifting on the boss, the finger carried by the rotor would shift so that it would get out of timing, the spark would get out of timing relative to the compression in the cylinder; is that right?

A Not entirely so.

1013 Q What is your understanding as to that?

A My understanding is that it would shift, not only

with respect to the timing of the engine, but with respect—that is, with respect to the timing of the compression of the engine, but also with respect to the relation with the electrode arm which broke the contact in the cylinder.

Q Suppose this magneto had been mounted on a shelf so that it could not shift, a shelf had been cast on the engine cylinder, or other means had been provided, like the arm 10 of the Podlesak patent in issue, reissue patent in issue, 13878, thereby holding the magneto so that it could not shift, there would not be any trouble then, would there, about the spark getting out of time with the engine; is that right?

A Yes, it would have been difficult not only to get proper adjustment in the first place, but it would have been difficult to maintain it.

Q Why wouldn't it be maintained after you got it?

A You have a linkage there which wears. You have got an adjustment screw which may shift out of position.

Q I am speaking—

A You have to time—

Q I am speaking of the timing of the spark relative to the engine cylinder.

A Pardon me, I didn't grasp that question.

Mr. Mason: Read it, please.

(Question read.)

Mr. Mason: I mean engine cycle. Will you change that to engine cycle, please?

A What I just said had reference to the connecting rod extending between the magneto and the electrode arm. With respect to the timing in relation to the compression of the engine, if that were mounted on a rigid shelf, so that 1014 it could not shift, it would, of course, be held in correct timing with relation to the engine, just as on other magnetos, for example, that of the Hennig patent.

Q The moveable electrode in this Milton type that we are referring to, was operated by a link positively connected to the rotor and having an adjustable nut on the end of the link, which engaged the arm on the moveable electrode; is that not so?

A Yes.

Q The opening of the electrode was caused by this adjustable nut striking the arm on the moveable electrode?

A Yes.

Q Now, let us assume that we have this rigid bracket that

I have been speaking about, so that this magneto does not shift, would this not also maintain the synchronism between the rotor and the moveable electrode?

A Oh, to a certain extent, of course.

Q Why not entirely?

A Because of wear of those parts, lost motion; and there are other disadvantages of that sort of an arrangement.

Q Oh, yes.

A As compared with the unitary—

Q I am talking about maintaining synchronism.

A Pardon me until I finish my answer.

Q Yes.

A As compared with the unitary magneto ignition device of the Kane patent. What is the question?

Q In the unitary magneto proposition of the Kane patent, there is also wear there and adjustments for that purpose; are there not?

A Not to any thing like the same extent.

1015 Q But aside from the wear of the parts you would practically maintain the synchronism in this old Milton type where the magneto was separate if it had been mounted on a bracket so that it was held rigidly; is that not so?

A No; I do not think so.

Q Why not?

A Well, for example, you remove the igniter block from the engine to examine the contact points and clean them, so that as things are ordinarily built you won't get them back on in the same position. That illustrates one of the distinct differences between that method of mounting and the Kane device.

Q Did any of the witnesses testify to any such trouble in the original apparatus?

Mr. Williams: I object to that question. The record shows that.

Mr. Mason: I will change the question.

Q Do you know anything about, from actual experience, about removing these spark plugs to clean them?

A I have seen them removed and replaced, participated in the operation; and I know the way the parts are ordinarily built, particularly at the date at which that model was used.

Q You had a little generator here this morning which you were showing to the court.

A Yes; do you wish it?

Q I just want to ask what the resistance of the armature is.

A I couldn't tell you.

Q Have you any idea?

A No. Probably around 50 ohms.

Q What was the resistance of the—what would you say to resistance of an armature of the magneto of the Sumter type would be?

A Around one ohm or less.

1016 Q The magnetic drag of that little generator that you had would be many times greater, would it not?

A No, very much less.

Q What?

A Very much less. The ampere turns on an armature of that kind is very much greater with the low resistance winding than it is with the high resistance winding.

Mr. Mason: That is all.

Redirect Examination by Mr. Williams.

Q Can you produce the defendant's type B which you used in making the tests recorded by the oscillograms which you have used here?

A I can.

Q Will you do that?

A The device which I now hand you is the one referred to.

Mr. Williams: I offer that in evidence as Plaintiff's Exhibit 79.

(The device referred to was received in evidence, marked Plaintiff's Exhibit 79, and is made a part of this record.)

Mr. Williams: In answer to one of Mr. Mason's questions you said in substance, I believe, that the lag of the phase of the current, or displacement of the phase of the current generated would be different in different machines, and that it might differ even in machines substantially alike mechanically. Will you state whether or not such a current phase lag is necessarily present in any and every machine to a greater or less extent?

1017 A If I understand the question, every magneto of this type when operated at operating speed has the condition in which the current curve lags in phase behind the mechanical movement of the armature or inductor.

When I said that there might be differences in individual

machines of the same mechanical type, I had in mind minute differences which would not affect the position of the current curve as an average position. It would be practically the same in all machines of a given type and construction.

In that same connection, I decide to point out that the use of the unitary construction, that is the Kane assembly, provides a means in which the best average position, or best average adjustment for the magneto in its relation to the sparking contacts can be positively determined by laboratory tests, and thereafter made permanently a part of the manufacturing construction of the machine.

In other words, you can check these in the laboratory and determine in the laboratory which is the best relation to have, and then by means of this unitary bracket assembly, establish that as a standard relation and get it as a manufacturing process.

Q Will you look now at this Plaintiff's Exhibit No. 58 and particularly the pages toward the back of the catalog, showing various styles and kinds of gas engines, and state whether or not this unitary magneto igniter equipment of the Kane patent can be applied to any and all styles and forms of engine without change in the construction or arrangement of the engine itself or any of its parts.

A The illustrations to which you refer are found on pages 18, 19, 20 and 21 of the catalog and illustrate various different types and makes of engines. They also illustrate the various multiplicity of different locations of the operating parts 1018 of the engine, other than the magneto, and the difficulty in assembling or mounting on the engine a non-unitary device. They emphasize the facility with which a unitary device like that of defendants or of plaintiff, can be mounted on almost any type of engine with minimum interference with the existing parts of the engine, there being but the single point of attachment, which is the same point of attachment that the igniter block has.

Q Can you illustrate on any of those pictures of engines in that catalog, or in any of the pictures of engines, or engines that we have here, the sort of difficulties which you indicate would be encountered in an attempt to put an equipment like that of the Weber patent upon it?

A Perhaps as good an illustration as we can get is with reference to the model of cut-away engine found on the platform here, Plaintiff's Exhibit No. 62.

I call attention to the parts of this engine which are found

along the side of the cylinder, adjacent to the spark plug. I point out that it would be a difficult matter to mount on this engine the support 31 required in the Weber patent for the driving spring, which must actuate the magneto and to find then a place for the pusher or push rod, which is required to operate it. While it might be possible, it would be a much more difficult and expensive job than was required by mounting the unitary magneto in the place at the point where the spark plug goes through the cylinder.

With that explanation I think that the similar difficulties which might be encountered in the several engines illustrated in the catalog just handed me will be more or less obvious.

1019 In the engines illustrated in this catalog, it is obvious at once that a place would have to be provided for mounting the spring drive bracket, 31, I think the number is, of the Weber device, requiring a boss on the engine cylinder, and machine work to make that boss adaptable for the bracket, and difficulty in finding a desirable place to locate it, particularly the cut at the bottom of page 18, or in the cut at the bottom of page 21.

Also in the vertical engine illustrated on page 20 a similar difficulty would be encountered.

Q And the difficulties would be different, would they, in the case of each of these different type of engines?

A Yes. It would mean necessarily a special adaptation for each type of engine.

Q Will you look at Plaintiff's Exhibit 44, Defendant's Machine Type A, and state whether the engaging surface of the striker in that device is to be regarded as a cam or cam surface, regardless of whether the surface is curved or straight?

A Yes, the engaging surface of the yoke portion of the rotor, that is, the striker arm carried on the rotor, is to be regarded as a cam surface engaging the anvil screw in the end of the electrode arm. I say this particularly in view of the language used in the Kane patent and of the construction to which that language refers.

Mr. Williams: That is all.

Recross Examination by Mr. Mason.

Q That surface you just referred to is a straight surface, is it not?
1020

A A flat surface, yes.

Q A flat surface?

A Yes.

Q Is the rotor there in that model?

A The yoke portion of the rotor is there and the striker arm portion of the rotor.

Q But this arm is not on the rotor direct?

A It forms a part of the rotor.

Q Not rigid with the rotor?

A It is in a rigid, angular relation to the rotor which is the relation essential for the adjustment and operative relation I have been describing.

Q Do you not in the construction of the Weber patent have a flat surface against which the screw strikes?

A In the Weber patent the corresponding—that is, the striker arm has a flat surface which engages the end of an anvil screw, 27.

Mr. Mason: That is all.

Mr. Williams: That is all.

(witness excused)

1021 E. J. KANE, re-called as a witness on behalf of the plaintiff, in rebuttal, testified as follows:

Direct Examination by Mr. Williams.

The magneto generator of the unitary magneto igniter equipment of the invention of witness, as described in his previous testimony, was not something that had to be made specially for the attachment, because it was coming through the shop as an experimental machine at that time. The magneto which witness had roughly blocked in on the first drawing, a number of them, had already been made. In making the unitary block attachment there was just one casting made for the first machine. Witness heard the testimony given by Mr. Milton. Not true that Mr. Milton first came to witness and gave him a problem in the following language, or substantially the following language, namely, to take the double link machine and extend the bracket so as to form a spark plug for holding the electrodes and putting into it the electrodes and working out the mechanism. Witness did not work under the instructions of Mr. Milton in making the first drawing for his unitary magneto igniter equipment. Witness was directed by Mr. Webster to do the work, and to the best of

his knowledge, Mr. Milton did not see that drawing; that is, did not see it while witness was there, until after witness had completed it and taken it down and shown it to Mr. Webster, and he asked witness to show it to Mr. Milton. Plaintiff's Exhibit No. 17 is an original drawing, not a tracing. That drawing was made at the residence of witness, on some paper he happened to find at his house and which he used because there was no buff paper at the house. Prior to making the drawing Plaintiff's Exhibit No. 17, witness never made a drawing illustrating the unit construction. Mr. Milton did not work with him on the design as it progressed. Not 1022 a fact that the drawing Exhibit No. 18 was turned over to Mr. Kroeplin to make working drawings prior to the making of one of the actual devices in conformity with the drawing of Plaintiff's Exhibit No. 18. That drawing was never turned over to Mr. Kroeplin, nor did he have it at any time. The two drawings, Plaintiff's Exhibit No. 17 and Plaintiff's Exhibit No. 18, were retained in the possession of the witness until the time of the interference in which he was involved with the Milton application. There were no working drawings such as defendant's exhibit blue prints, or the tracings or originals for such working drawings, made by any one, to the knowledge of the witness, before the first sample machine was built in conformity with plaintiff's Exhibit No. 18 drawing. Witness did not think he ever saw the drawing which is in evidence, dated June 3, 1909, until it was produced at the trial, and had no knowledge when it was made, and did not know of any other such working drawing which was made prior to that time. Being referred to the testimony of Mr. Milton, to the effect that after the completion of the drawing, plaintiff's Exhibit No. 18, working drawings were made for patterns for the machine, witness stated that after finishing the drawing, plaintiff's Exhibit No. 18, he made a rough sketch or drawing of the igniter block with the integral bracket on it and it was from that that the pattern was made. Witness did not know what became of that sketch. It was sent down to have the pattern made off of it and he did not think it ever came back to him. There were one or two small freehand sketches made of some of the pieces used, and it was from those few drawings and Mr. Munn's scaling off of the big drawing that the first machine was made. Witness made the free-hand sketches mentioned. Asked as to how much machine work it was necessary to do

in building the first sample machine, in view of the fact that the magneto part was already constructed for other purposes, witness said:

1023 "We did not have to make any drawings of this part on which I do not see a tag to mark it (indicating)" witness having his hand on the magneto part and the rotor and the shaft.

"We made a rough sketch to get a forging made to take the place of this piece, which is marked Plaintiff's Exhibit 14-A. The electrodes and this part on the plug is similar in dimensions to the standard International Harvester Company igniter plug, like Plaintiff's Exhibit 11-A, except that we had to put a small arm on it made out of a forging, but the main parts of it were taken from the I. H. C. igniter. That left as a dimension a finished part that we had to make in the shop to drill the hole for the shaft of the rotor and finish off the boss to mount the magneto on and drilling a hole in the casting over here (indicating) to carry the eccentric."

Mr. Munn was a very highly skilled mechanic and in the opinion of the witness, one could take that main drawing Plaintiff's Exhibit No. 18, and turn it over to Mr. Munn, with a casting to start with, and he could go ahead and complete the whole machine without any trouble. In Plaintiff's Exhibit No. 11 apparatus the engine push rod in operating the push finger of that mechanism was located above the axis of the rotor, and it was because there was a lever in there between the engine cam and the magneto that made it necessary to switch the cam around on the engine. In the 2-link mechanism illustrated in Defendant's Exhibit 18 the push-rod or engaging member as driven by the engine, was located below the axis of the rotor shaft. The reversing lever was not employed with this 2-link mechanism. When the reversing lever was employed in connection with the apparatus of Plaintiff's Exhibit No. 11 it was not necessary to change the location of cam on the engine crank shaft. The cam was not changed, but the eccentric that drove the magneto or igniter, or igniter push-rod was changed in relation to the exhaust cam, being turned practically 180°. With the double link mechanism it was not necessary to shift the eccentric. In the apparatus of Plaintiff's Exhibit No. 18 the engine push rod is located above the axis of the rotor, and in that

1024 respect the location of the push rod finger of Plaintiff's Exhibit No. 18 apparatus is like the old Milton appara-

tus of Plaintiff's Exhibit No. 11. Nevertheless, it was not necessary in the apparatus of Plaintiff's Exhibit No. 18 to change the position of the engine eccentric to 180° , because in the attachment illustrated by the Plaintiff's Exhibit No. 18 there was no lever introduced between the magneto trip and the eccentric. There was a direct push, instead of a lever being in there.

After Mr. Milton first criticized the design of the apparatus as shown in Plaintiff's Exhibit No. 18, and said that he did not think it was going to work, and that witness had got the igniter finger pointing upwards on the direct push of the magneto, and that that was going to place it out of time, so that it wouldn't trip at the right time, there was very much discussion. Witness simply stated that he was sure it would work, and Mr. Milton inspected it further and finally agreed that it probably would. Witness did not make the drawing Exhibit No. 18 under Mr. Milton's instructions or direction.

A. C. KLECKNER, re-called as a witness on behalf of plaintiff, in rebuttal, testified as follows:

Direct Examination by Mr. Williams.

Witness heard the testimony given by Mr. Cox on the preceding day. Witness had ascertained the number of unitary magneto igniter equipments sold by the Webster Electric Company to the International Harvester Company, beginning in 1914, and found that during the year 1914 there were shipped to the International Harvester Company at Milwaukee 9,904 equipments; during the year 1915 there were 1025 shipped 5,373 equipments; during the year 1916, 5290 equipments; during the year 1917, 5,471 equipments; and during the year 1918, 2,503 equipments; during the month of December, 1918, there were shipped 576 equipments to the International Harvester Company. Witness heard Mr. Cox's testimony relative to the number of magneto equipments of a different type which had been installed on engines during recent years, but neither those figures nor anything else which the witness had heard or learned since giving his previous testimony had changed his opinion that of all the single cylinder stationary internal combustion engines now manufactured and sold in this country, approximately 80%

are equipped with the unitary magneto igniter equipment such as is involved in this suit. The figures given by the witness as to the number of equipments shipped by the Webster Electric Company to the main works at Milwaukee of the International Harvester Company did not include the number of equipments shipped to branches of the International Harvester Company, and other points throughout the country, for repairs or replacements or other purposes.

Plaintiff's counsel offered in evidence as Plaintiff's Exhibit No. 80 a printed copy of the Rules and Practice of the United States Patent Office as revised January 1, 1916.

At this point in the proceedings plaintiff's counsel, Mr. Williams, made a personal statement to the Court, which is included in this statement of evidence at his request but is not considered by defendant's counsel to be any proper part thereof.

STATEMENT.

Mr Williams: Now I do want to say this, your Honor, relative to the matter of these notes that Mr. Peaks had been asking about repeatedly and the date upon which those notes were paid. I do not know whether he has in any of his statements explained his anxiety relative to them and the 1026 proof of the date of payment or whether your Honor has looked over the copy of the interference proceeding, between Kane and—which one was that?

Mr Bulkley: Milton.

Mr Williams: Between Kane and Milton. During the course of that interference, as the interference record as it has been offered here will show, there was first an award of priority in favor of Kane. Shortly after that award of priority there came, there was sent to me or to my firm a notice and action taken by the Commissioner of Patents and by which he vacated the decision or judgment of the examiner of interferences in making that award of priority upon the ground, as stated by him that it having been brought to his attention, "The fact is developed that when the testimony was taken both the Kane application and the Milton patent were owned by the Webster Electric Company and that com-

pany therefore had it within its power to control the evidence introduced," those being the reasons given for taking that action.

The fact of the matter is, shortly after the receipt of that notice or letter from the Commissioner of Patents I went to Washington and explained—

Mr Bulkley: Are you stating facts?

Mr Williams: Yes.

Mr Bulkley: As a witness or what?

Mr Williams: I am willing you should interrogate me. I want to be sworn, if necessary. Yes, I should like to state the fact.

I saw the Commissioner of Patents and told him all of the circumstances as I knew and understood them at that time, whereupon he requested me to file a petition asking for such relief as I had told him I wanted, which petition was then filed and is here a part of this record and supported, as he suggested, by my affidavit, which is in the record here now.

Without taking the time to read that affidavit, it states, I think, in substance, that while I was the attorney of record, as the record then showed, for Milton, and my firm 1027 were the attorneys of record for Kane, that I held the title and still even at that time held the title in the Milton patent as trustee under a certain trust agreement under which some notes were to be paid and some of which notes were yet to be paid in future, some not maturing until 1919.

I want to say this: that when I made that affidavit the title to the patent was still in me as trustee. No assignment had then been made by me to the Webster Electric Company. The facts stated in that affidavit as to the dates when the notes matured were in conformity with the record I had of the matter in my copy of the trust agreement and the escrow agreement which preceded it and which showed to me at the time I made the affidavit that the notes did not mature until 1919, and that in making the affidavit I referred to the trust agreement and the escrow agreement to which I was a party and based the statement contained in my affidavit upon what my records then showed as to the dates; and at that time I had never been notified by anyone, so far as I can remember and so far as I have been able to learn by an examination of all of the records in my office, I never had been notified that the last of those notes had been anticipated in its payment. That is to say, the investigation that we made here during

the trial—made sometime earlier, as a matter of fact, it was about the time of the incorporation of the Webster Company of Wisconsin—showed that the notes had then been paid, but no notice had been given me of that fact either by Milton or by the Webster Electric Company at the time when I made this affidavit saying that Milton still had an interest, a reversionary sort of interest in his patent.

1028 Now, in about March, 1918, when the incorporation of the Webster Electric Company of Wisconsin was imminent, or in progress, there came a time and a request to my office to do the things necessary to effect the formal lodgment of title in the new corporation, so that the title papers might be recorded. At that time we prepared assignments of everything that we knew of to which the Webster Company of Virginia had title; sent them to be executed by the old corporation; whereupon then for the first time I received a letter which I have here and will be glad to show to counsel, telling me that from those transfer papers we had omitted these Milton patents, of which this particular one involved in the interference is one. I have all of the letters here, which I will show, but without attempting to detail what passed back and forth, the substance of it was that I then made—well, I think I first wrote the company that we had not made the assignment of that patent because proof had not been made to me yet of the payment of those notes, and evidently had not been made, and then it was the notes were sent to me, canceled notes, and I was satisfied they had all been paid, some of them, in anticipation of the dates upon which they mature. Whereupon I then, as trustee, executed an assignment of the patents. I think the papers offered by the defendants will show that the assignments were executed, I think, to the Wisconsin corporation direct rather than first to the Virginia corporation and then to the Wisconsin corporation.

Now, the reason I make that statement is this, that the affidavit which I made states, I think, it states in substance at least, that Milton had an interest in the patent and would continue to have that interest until all of the notes had been paid and that some of the notes did not mature until 1919.

I am willing to answer any questions that counsel may want to ask me or any that the court may be interested in upon that matter.

The Court: That is sufficient, a personal statement.
1029 Plaintiff's counsel offered in evidence as Plaintiff's Exhibit No. 80, the trust agreement of December 11, 1915, between Milton and the Webster Company and Mr. Williams as Trustee.

Plaintiff's counsel also offered in evidence certain marked parts of the Manning and Van Deventer depositions taken in the mandamus suit between Emil Podlesak and the Webster Company as Plaintiff's Exhibits No. 81 and No. 82, which were received subject to defendant's objections.

Plaintiff's counsel also offered in evidence as Plaintiff's Exhibit No. 83 the agreement between all of the defendants as to the party to whom, for their benefit, as their interests may appear, the royalties were to be paid.

Here occurred a discussion between court and counsel with reference to the answer of the Sumter Company to plaintiff's supplemental bill, which discussion resulted in leave of court to the Sumter Company to adopt, as its answer, the answer to said bill filed by the Splitdorf Company; and with leave to the plaintiff to amend its supplemental bill in such a way as to allege the present Webster Company of Wisconsin as a successor to the Webster Company of West Virginia.

At the request of defendant's counsel, it was stipulated that a copy of the British patent to John Lewis Milton, dated October 28, 1909, No. 24,838, was received in the Patent Office of the United States on July 18, 1910.

It was further stipulated, at the request of plaintiff's counsel, that on or before December 3, 1915, H. R. Van Deventer of Sumter, S. C., and Edward E. Clement of Washington, D. C., had been appointed as attorneys for the party Podlesak in interference No. 35,181, between Podlesak and Kane.

Defendant's counsel offered in evidence a part of the files of this Court in an action at law brought by the Webster

Electric Company, a corporation under the laws of
1030 West Virginia, against Tesla Emil Podlesak, No. 32,313, the action having been originally commenced in the Municipal Court of Chicago, as its No. 209,569 and removed to this Court in regular manner for diversity of citizenship, the part of the file so offered being the transcript filed in this Court upon removal, together with the original statement of claim, and a stipulation for its dismissal of January 25, 1919, filed in this Court, and order dismissing the same, on the same date, entered by Judge Carpenter, the documents offered to

be marked Defendant's Exhibit No. 73. Objected to by plaintiff's counsel, and received subject to objection. The statement of claim filed in the Municipal Court in the above case, on December 28, 1915, was separately marked Defendant's Exhibit No. 74; and the stipulation dismissing the suit was marked Defendant's Exhibit No. 75, and Judge Carpenter's order, dismissing it, Defendant's Exhibit No. 76.

Which was all of the evidence offered on the hearing of the above entitled cause.

1031 It is stipulated and agreed that the foregoing Statement of Evidence may be approved by the Court.

WILLIAMS, BRADBURY & SEE,
Solicitors for Plaintiff.

EDWARD RECTOR

DAVID B. GANN

Solicitors for Defendant Splitdorf Electric Company

Approved Accordingly.

CARPENTER

U. S. District Judge.

29th Oct. 1919

* * * * *

1032

OPINION.

* * * * *

Williams, Bradbury & See and Jerome N. Frank, of Chicago, Illinois, and Livingston Gifford of New York City, for plaintiffs.

Charles C. Bulkley and Gann & Peaks of Chicago, and Sturtevant & Mason, of Washington, D. C., for defendants Sumter Electrical Co. and Splitdorf Electric Co.

Henry Joseph Podlesak pro se, of Chicago, William D. Thompson, of Racine, Wisconsin, and William L. Hall, of Chicago, for Tesla Emil Podlesak.

Original and supplemental bills for patent in infringement and unfair competition, suit was commenced Oct. 12, 1915, and the supplemental one Oct. 25, 1918. The patents are as follows:

No. 13,878 (reissue) to Emil Podlesak, Feb. 9, 1915.

No. 1,055,076 (original) To Emil Podlesak, Mar. 4, 1913.

No. 947,647 to Henry J. and Emil Podlesak, Jan. 25, 1910.

No. 948,483 to the same persons Feb. 8, 1910.

No. 1,003,649 to the same persons Sep. 19, 1911.

No. 1,022,642 to Henry J. Podlesak Apr. 9, 1912.

No. 1,056,360 to Henry J. and Tesla E. Podlesak, Mar. 18, 1913.

No. 1,098,052 to Emil Podlesak, May 26, 1914.

No. 1,098,754 to Emil Podlesak June 2, 1914.

No. 1,101,956 to Emil Podlesak, June 30, 1914.

The supplemental bill is for infringement of the patent to Edmund J. Kane, No. 1,280,105, Sept. 24, 1918, application Feb. 2, 1910.

These patents all relate to current generators for ignition applied to internal combustion hit and miss engines, and improvements.

The validity of the Podlesak patents was not a matter of controversy on the trial, by reason of the fact that the 1033 plaintiff, and the corporate defendants are licensees or assigns of the Podlesak patents, and hence are estopped to question their validity. Thus the controversy involved the construction of the two license contracts Exhibits C and D explained later, as well as the validity of the Kane patent brought in by supplemental bill. The contracts referred to with two others are in substance as follows:

By Exhibit A. license agreement of Nov. 2, 1906, the Podlesaks give to plaintiffs predecessor the exclusive license to make, use and sell within the United States, for the term of any patents which might be granted, applications No. 76559, 413068, 413069 and 413,070, and covenanting that while the license was in force, that they would not grant, permit or encourage others, to make, use or sell the inventions. It was agreed that the agreement should extend to and be binding upon the heirs, assigns and legal representatives of the Podlesaks, and the successors and assigns of the corporation. It is claimed by defendants that this agreement was revoked some time before February 5, 1914, when Exhibits C and D were made.

Exhibit B Aug. 17, 1912, is a contract between the Podlesaks dividing their interests among themselves in the patents in question, and serial No. 618,483.

By license agreement Exhibit C, Feb. 5, 1914, the Podlesaks granted to plaintiff the exclusive right to make, use and sell the inventions described as Nos. 947,647, 948,483 and 1,003,649, within the United States for the patent terms; cove-

nanting that they would not while the license was in force make, use or sell the invention or permit, grant or encourage others to do so. The same provision as to assignment was also contained in this license.

By the shopright agreement, Exhibit D, Feb. 5, 1914, the Podlesaks made a contract with plaintiff reciting that they were owners of patents Nos. 1,022,642, 1,056,076 and 1,056,360, and applications No. 734,143, 668,153, 639,738, and that plaintiff desired to secure a shopright and license to make, use and sell the inventions in the United States for the life of the patents; and that it was therefore agreed that the Podlesaks granted to plaintiff a shop right and license to make, use 1034 and sell the inventions described in the patents and applications in the United States for the terms of the patents.

The corporation further agreed that it would use the devices made under this shop license only in connection with or for repairs to, the devices mentioned in Exhibit C, and if made or sold not as a part of such devices the corporation would pay royalty 5% of gross receipts, and Podlesaks agreed "that they will not, while this license to the party of the second part is in force, give or grant shop licenses to make, use or sell the hereinsaid inventions, expressly reserving, however, the right to themselves to make, use and sell the hereinsaid inventions". This agreement to be terminated upon the termination of Exhibit C.

The same clause as to assigns is contained in this paper as in Exhibit A. By clause 8 of Exhibit D it is provided that the plaintiff with the written approval of the Podlesaks, may grant shop licenses, to makers of or dealers in gas-engines or gas-engine accessories embodying the inventions of patents 1,022,642 and 1,055,076 (the latter being for a bracket to mount the magneto upon the engine), on the same terms as to use only in connection with the inventions licensed in Exhibit C.

By the 9th paragraph it was provided that the plaintiff "shall not permit or encourage other parties to manufacture, use or sell devices covered by hereinbefore mentioned patents or patents that may be granted on hereinsaid applications" except as above provided as to licenses to engine builders or dealers.

In the 2d paragraph it is agreed that both parties should assist each other in procuring patents, and in any suit or pro-

ceeding brought under any of the patents or for their infringement; but the Podlesaks should not be required to bear any expense in any such suit and they appointed the attorney for the plaintiff as their agent or attorney for the purpose of joining them as complainants in any such suit for infringement, without expense to the Podlesaks, who were to be exempt from liability for damages and costs in such suits, which were to be assumed by the plaintiff.

A further agreement made Jan. 20, 1915, Exhibit E, changes the royalty and contains the same agreement as to assigns.

1035 The Podlesaks having on September 4, 1915, assigned all these patents to the Sumter and Splitdorf Companies and the contracts Exhibits C and D, the construction of the license agreements becomes very important.

It should further appear that Emil Podlesak entered the employment of plaintiff's predecessor August 10, 1909, for the purpose of experimenting in magnetos, and if patents should be obtained on his inventions relating to the magneto then in use they were to be assigned to plaintiff's predecessor. In May 18, 1910, a second contract was made, providing that Podlesaks should give his entire time to the development of magnetos for the use of which a royalty was to be paid. And by a third agreement, made March 3, 1913, reciting that Podlesak was employed by plaintiff, and that it desired to secure for its benefit and use such improvements in ignition apparatus as he might from time to time develop and that any patents obtained by him thereon should be assigned to plaintiff. This contract was to run until March 3, 1916. Podlesak ceased to be employed under this contract May 14, 1915. Under these contracts Emil Podlesak was successively an employe, superintendent, works manager and secretary of plaintiff corporation. These employment contracts, so far as they relate to the ownership of patents, were superseded by Exhibits C and D above stated.

The meaning or construction of Exhibit C is entirely clear. The Podlesaks reserved no interest of any kind in any of the patents licensed and had nothing to assign to the Splitdorf Company except the right to the royalties secured by the contract and the legal title to the patents. That is all the assigns took by the assignment. There is no controversy on this point. The second contract Exhibit D, however, is not so plain.

A patent conveys to the patentee only a negative right of exclusion not the natural original right to make, use and sell the device covered by it. A licensee by the license obtains only immunity from an injunction suit brought against him by the patentee or owner. *Paper Bag Case*, 210 U. S. 405, 28 S. Ct. 748, 52 L. Ed. 1122. *Hartman v John D. Park & Sons*, 145 Fed. 358, C. & A. Ry. Co. v Pressed Steel Car Co. 243 Fed. 883, C C A Seventh Circuit. So by the first clause of

1036 the contract the plaintiff obtained immunity from suits by the Podlesaks against it, but left them free to grant licenses to others, except as far as the plaintiff was authorized to grant licenses to engine builders and dealers in engines or accessories, such as the Splitdorf Company. The right of exclusion of others which is the right, dominion or monopoly secured by the patents was thus parceled out, divided or partitioned as follows:

The Webster Company had the right to exclude every one but their engine builder or accessories dealer licensees, and the Podlesaks. By the second paragraph the plaintiff might sue for infringement and control of the litigation, and by paragraph 8 grant licensees to a limited class reserving royalties to itself. Excluding for the moment the later provisions of paragraph 1, quoted above, the patentees might grant licenses, except to the limited class referred to. But by paragraph 1 they covenanted that they would not exercise this right; "that they would not give or grant shop licenses to make, use or sell the hereinsaid inventions, expressly reserving, however, the right to themselves to make, use and sell the hereinsaid inventions." Then by the final clause the contract was made to extend to and be binding up assigns, etc.

The vital question therefore is did the patentees have the right to assign the reserved right or power to make, use and sell in view of all the recited provisions?

It will be noticed that they retained no power of exclusion whatever; that was in the plaintiff. Their patent rights were gone, but the Webster Company yielded to them the right to go into business. They did not avail themselves of this, but if they had done so, and a competitor had infringed it seems clear that they could not have maintained an infringement suit, since that right was in the Webster Company alone. But not to place too much weight on a technical point, is the provision for assignment at all consistent with their agreement not to make shop licenses or with the clause giving the right

to the plaintiff to license to makers of and dealers in engine accessories? The patentees have assigned the patents to the defendant companies, members to which plaintiff was authorized to grant licenses, and those companies are now exercising shop rights under the assignment apparently in the face 1037 of the agreement that the patentees would not authorize this, and that the plaintiff might do so.

The only way to harmonize all the contract provisions is to regard the right of the patentees to assign as limited to the bare legal patent title and the right to royalties, accounting and inspection and that the words "to themselves" should read "to themselves only." Thus all the provisions are made consistent inter se and an inequitable result prevented. The patentees have received \$95,416 in royalties under Exhibit C, covering six years, or \$16,000 a year. They could well afford to stay out of the risks of business. To attempt to authorize a formidable competitor like the Splitdorf Company, one of the very dealers to whom plaintiff was given the right of license, after the latter had built up an enormous business, to profit by that business, is utterly foreign to the spirit and purpose of the contract. The assignment should be restricted to the legal title and right to royalties, accounts and inspection, and the power of the plaintiff to sue for infringement without joining the assignee be recognized. Whether the right of inspection of plaintiff's books should be regulated so as to prevent a competitor from learning the customers and business secrets of the plaintiff should be postponed until the decree is settled.

The case of *Waldo v American Soda Fountain Co.*, 92 Fed. 623, is distinguishable because the general clause making the contract extend to assigns could not possibly reach any assignable interest except that to which the court applied it.

The Kane and Milton Patents. Both these patents were produced in plaintiff's shop by its employes and with its facilities. It owns the patents and by its outlay and business management has made them of great value. It could have sued on both of them in the alternative, and thus escaped the burden of establishing the priority of either. Having sued on Kane it must technically show its priority; but it has always owned both and has given them almost all of their value.

It is indeed true that Kane must be shown to have been the prior inventor, by proof beyond reasonable doubt. 1038 This is required by the law and the evidence must be clear and convincing. Milton's British application was

filed first and Kane's at a later date, but within a year. Hence the rule as to reasonable doubt applies in full force.

The evidence shows the following: Both Milton and Kane were plaintiff's employes. Milton was Kane's superior, being employed as an engineer and inventor, whose inventions were to belong to plaintiff. During the year 1909, up to August 20, he was working on a high tension magneto for variable speed, multi-cylinder gas engines, which gave great promise, and was the means of securing a large contract for plaintiff with the Cadillac Company, but which was a failure. He was also paying some attention to the low tension magneto for hit and miss engines.

In April, 1909, the magneto produced by plaintiff called the Milton Magneto, proved unsatisfactory, and there was danger of plaintiff losing the business of supplying it to its chief user, the International Harvester Company. Mr. Webster, the president of the plaintiff, urged Kane, and another employee by the name of Chiville, to try to produce a device which would solve the difficulty. Kane worked the matter out on April 11, 1909, made an incomplete drawing and brought it to plaintiff's office. He followed this by a complete drawing made April 14, 1909, showing the new device in full detail. He exhibited the first drawings to his father, then employed by the Harvester Company, and to persons in the office, and the later drawing to Mr. Chiville and others, and a device made according to the later drawing was produced shortly after, put on an engine and worked satisfactorily. None of these facts is in dispute, but Milton testifies that the idea was his and not Kane's, and that the latter made the last drawing under his direction. Kane produced both of the drawings, they bear his name and the dates, and he is corroborated by his father, who produced his diary showing the date appearing on the first drawing, both of which are in evidence.

1039 Milton's testimony that the drawings were made under his direction is not corroborated, except by slight circumstances unsatisfactory in their character, and is inconsistent with his testimony and conduct in the Kane-Milton interference proceedings in the patent office. In those proceedings he put the date of his disclosure in August, 1908. On this trial he adopted Kane's date. He took very little interest in the interference proceedings, but refused to concede priority to Kane. His American patent was owned by plaintiff so he had no interest in showing priority, except the

pride of an inventor. He produced no drawings showing his alleged discovery other than those in the English patent made in October, 1909; no original drawings whatsoever, no corroboration of his claim to invention. While the correspondence in 1909 between him and Mr. Webster shows that he took considerable interest in the improved low tension magneto, as well as the high tension device, and he attempted to develop it in England, yet the evidence as a whole is overwhelming that he was not the inventor, and that Kane was. The evidence is thoroughly satisfactory. A like decision was reached in the patent office also, and this determination imposed upon Milton the burden of showing its incorrectness under Section 4914, R. S. U. S., decisions by the Court of Appeals of the District of Columbia in interference cases are binding on the office, they are not *res adjudicatae* in the courts. *Westinghouse v. Hein*, 159 Fed. 936, 87 C. C. A. 142, 24 L. R. A. N. U. S. 948. Like all executive decisions they are presumptively valid on questions of fact, not subject to collateral impeachment except for gross mistake or fraud. A patent is presumed valid, as everybody knows. Like presumption should aid the decision of the examiner in deciding an interference.

Apart from these considerations, however, the proof shows that Kane is beyond reasonable doubt the first inventor.

The Kane Patent. It is urged by defendant that the claims of the Kane patent sued on, being 2, 3, 7 and 8, are invalid because not with the original disclosure, 2 and 3 being in 1040 the Milton interference, and the other first introduced in 1918. Thus it is necessary to examine Kane's original application, on which he obtained his first patent, No. 1,204,573, the one in suit having been issued on a divisional application.

Kane's first application of Feb. 2, 1910, describes the magneto, and the mechanism by which the armature is so operated as to cause a spark to be produced in the engine cylinder at the instant of compression. The drawings show the device fully, with one exception and are reproduced in the patent in suit, with an additional one taken over from the Milton patent, showing how the movable electrode is brought back to normal position. It is true that the main object of Kane seems to have been to cover means for rendering the apparatus inoperative during the high speed period of the engine. But if he shows enough in his specification, drawings and claims to

cover the elements of the claims made later, in the patent in suit, that is sufficient.

In the first place the drawings in the first application exhibit all that the later claim two includes, except the curved cam surface. They show a cam surface in the sense that two surface are brought in contact by circular movements around different centers and with different radii. They they slide on each other there will be the true cam movement. Claim 3 of the patent in suit counts on a cam surface only, and hence that claim is certainly within the original drawings. Kane therefore had the right to make that claim.

Claims 7 and 8 are much broader, and it is urged that the original disclosure did not cover the subject matter of these two claims. The claims follow:

"7. In an electrical ignition device for internal combustion engines, the combination of a magneto generator comprising rotor and stator and generating winding, a pair of relatively movable make and break spark electrodes adapted to be located within an engine cylinder, spring means tending normally to hold said rotor in a certain position, 1041 mechanism whereby the movement of the rotor effects the separation of said electrodes at a predetermined point in the movement of the rotor, a rigid unitary and integral support upon which all of the aforesaid parts are mounted, whereby all of said parts may be removed from and returned to their position upon an engine cylinder without disturbing their relations one to another, conductors for carrying electric current from said generating winding to said electrodes, and engine driven means adapted to oscillate said rotor against the action of said spring means and then to release it.

8. In an electrical ignition device for internal combustion engines, the combination of a magneto generator, comprising rotor and stator and generating winding, a pair of relatively movable make and break spark electrodes adapted to be located within an engine cylinder, spring means tending normally to hold said rotor in a certain position, mechanism whereby the movement of the rotor effects the separation of said electrodes at a predetermined point in the movement of the rotor, a supporting member upon the several parts of which all of the aforesaid mechanism is mounted and having a single integral part adapted to be attached to the engine, whereby all of said mechanism may be removed from the en-

gine by removing said single integral part and may be returned to its position upon the engine with unchanged relations between any and all of the parts of all of said mechanism, thereby insuring the predetermined synchronism and interrelated adjustment of said mechanism when it is replaced upon the engine, and engine driven means adapted to oscillate said rotor against the action of said spring means and then to release it."

Original claim 8 in the first Kane application reads: "5.

In igniters for explosive engines, the combination with 1042 an electric circuit having included therein two electrodes, of means for normally holding the electrodes in contact with each other, a magnetic field, an oscillatory armature located in said field and included in said circuit, a reciprocating member controlled by the running of the engine for moving the oscillatory armature in one direction, means for moving the oscillatory armature in the opposite direction, means for separating the electrodes when the oscillatory armature is moved in said opposite direction, and means for timing the movement of said armature in said opposite direction."

I think that claims 7 and 8 are shown in all their elements in the original application. Figure 1 shows the unitary structure attached to the engine, and claim 8 (original) shows in a general way the electrical device. I find claims 3, 7 and 8 of the Kane patent in suit valid.

Eight years elapsed between applying for and issuing the Kane patent, but Kane complied with the law and Patent Office Rules in all respects. Two interferences had to be disposed of, with the necessary delays incident to them. A divisional application was required and must be prosecuted. Mere delay does not affect the validity of the patent. *Columbia Motor Car Co. v. Duerr & Co.*, 184 Fed. 893, 107 C. C. A. 215; *Cleveland Foundry Co. v. Detroit Vapor Stove Co.*, 131 Fed. 853, 68 C. C. A. 283, *Cadillac Motor Car Co. v. _____*, 225 Fed. 983, 141 C. C. A. 105. There are many other like decisions.

The question of collusion in the Milton-Kane interference is entirely set at rest in favor of plaintiff the decision in this circuit of *Western Glass Co. v. Schmertz Wire Glass Co.*, 185 Fed. 788, 109 C. C. A. 1.

It is unnecessary to consider the effect of dissolving the Kane-Podlesak interference by reason of the conclusion that

the assignment of Exhibit D is limited to the patent legal title, royalties, accounting and inspection.

1043 Claims 1, 2, 3, 8, 9, 21 and 22 of the Podlesak reissue 13878 are infringed also such claims of Podlesak patent 1,101,956 as may be in issue.

No sufficient proof of contributory infringement appears, and the bill should be dismissed as to the Podlesaks. Other matters reserved until settlement of decree.

SANBORN,

J.

(Endorsed) Filed February 13, 1919. T. C. MacMillan,
Clerk.

1044

DECREE.

April 4, 1919.

This cause having come on to be heard on the pleadings and proofs, and having been argued by counsel, and the court being fully advised in the premises, it is

Ordered, Adjudged And Decreed, as follows:

I.

That United States Letters Patent No. 1,280,105, granted September 24, 1918, to plaintiff, Webster Electric Company, of Racine, Wisconsin, a corporation of Wisconsin, on the application of Edmund Joseph Kane, for improvements in Electric Igniters, are good and valid in law, and that plaintiff, Webster Electric Company, a corporation of Wisconsin, is the sole and exclusive owner of said Letters Patent and of all rights and privileges thereunder.

II.

That plaintiff, Webster Electric Company, a corporation of Wisconsin, is the licensee and the owner of other rights and privileges granted by and under the contracts C, D and E, identified in the original bill of complaint under each of United States Letters Patent No. 947,647, granted January 25, 1910 to Henry Joseph Podlesak and Tesla Emil Podlesak, for improvements in Inductor Generators for Ignition Purposes; No. 948,483, granted February

8, 1910, to Henry Joseph Podlesak and Tesla Emil Podlesak, for Inductor Generators for Ignition Purposes; No. 1,003,649, granted September 19, 1911 to Henry Joseph Podlesak and Tesla Emil Podlesak, for improvements in Inductor Generators for Ignition Purposes; No. 1,022,642, granted April 9, 1912, to Henry J. Podlesak, for improvements in Low Tension Sparking Mechanism for Gas Engines; No. 1,056,360, granted March 18, 1913, to Tesla Podlesak and Henry Joseph Podlesak, for improvements in Inductor Generators for Ignition purposes; No. 1,098,052, granted May 26, 1914, to Emil Podlesak, for improvements in Magneto Machines; No. 1,098,754, granted June 2, 1914, to Emil Podlesak, for improvements in Inductor Alternators; No. 1,101,956, granted June 30, 1914, to Emil Podlesak, for improvements in Ignition Devices for Explosive Engines; and No. 13,878, reissued February 9, 1915, to Emil Podlesak, for improvements in Current Generators and Igniters for Internal Combustion Engines.

III.

That United States Letters Patent No. 13,878, reissued February 9, 1915 to Emil Podlesak, for improvements in Current Generators and Igniters for Internal Combustion Engines, and United States Letters Patent No. 1,101,956, granted June 30, 1914, to Emil Podlesak, for improvements in Ignition Devices for Explosive Engines, are good and valid in law.

1046

IV.

That the defendants Sumter Electric Company and Splitdorf Electrical Company have infringed claims 3, 7 and 8 of said Letters Patent No. 1,280,105 and claims 1, 2, 3, 7, 8, 9, 15, 21 and 22 of said Letters Patent No. 13,878, and claims 1, 2, 3, 6, 11 and 12 of said Letters Patent No. 1,101,956, by the manufacture and sale of machines exemplified by Plaintiff's exhibit No. 44, Defendants' Machine Type A, and that said defendant corporations also have infringed claims 3, 7 and 8 of said Letters Patent No. 1,280,105, and claims 15, 21 and 22 of said Letters Patent No. 13,878, and claims 1, 2, 3, 6, 7 and 12 of said Letters Patent No. 1,101,956 by the manufacture and sale of machines exemplified by plaintiff's Exhibit No. 79, Defendants' Machine Type B, and that said defendant Splitdorf Electrical Company has infringed claims 7 and 8 of said Letters Patent No. 1,280,105 and claims 15, 21, and 22 of said Letters Patent No. 13,878, by the manufacture and sale of

machines exemplified by Plaintiff's Exhibit No. 45, Defendants' Machine Type C, and that said defendant corporations have violated the rights of plaintiff under said Letters Patent by the manufacture and sale of said machines.

V.

That a perpetual writ of injunction be issued forthwith against the defendants Sumter Electric Company and Splitdorf Electrical Company, enjoining and restraining them, and each of them, and their officers, agents, attorneys, clerks, servants, workmen, representatives, and all others under the control or the direction of either of them:

1047 1. From directly or indirectly manufacturing, using, selling, disposing of, offering for sale, offering to dispose of, or advertising the infringing machines exemplified by Plaintiff's Exhibit No. 44, Defendants' Machine Type A, Plaintiff's Exhibit No. 79, Defendants' Machine Type B, and Plaintiff's Exhibit No. 45, Defendants' Machine Type C, or any other machine embodying the invention claimed in claims 3, 7, and 8 of said Letters Patent No. 1,280,105, claims 1, 2, 3, 7, 8, 9, 15, 21 and 22 of said Letters Patent No. 13,878, or claims 1, 2, 3, 6, 11 and 12 of said Letters Patent No. 1,101,956, or in any of said claims, and from in any manner infringing any of said claims or violating plaintiff's rights thereunder, and from in any manner aiding, assisting or co-operating with others so to do.

2. From directly or indirectly using the name "Podlesak" on or in connection with the sale of, or in advertisement of, any apparatus of the class described in said Letters Patent Nos. 947,647, 948,483, 1,003,649, 1,022,642, 1,098,502, 1,098,754, 1,101,956, and reissue 13,878. But the rights of Henry J. Podlesak and Tesla E. Podlesak under Exhibit D are not herein determined.

VI.

That a perpetual writ of injunction be issued forthwith against the defendants Sumter Electrical Company, and Splitdorf Electrical Company, enjoining and restraining them and each of them, and their officers, agents, attorneys, clerks, servants, workmen, representatives, and all others in privity with
1048 them, or under the control or the direction of either of them, from doing or procuring to be done, anything in

derogation of the right of plaintiff, Webster Electric Company, a corporation of Wisconsin, to institute, maintain and control suits, either in the name of Webster Electrical Company, Splitdorf Electrical Company, Sumter Electrical Company, and others, or any of them, as plaintiff may determine, for the infringement of said United States Letters Patent Nos. 947,647, 948,483, 1,003,649, 1,022,642, 1,056,360, 1,098,052, 1,098,754, 1,101,956, or reissue 13,878, or any of them, and from directly or indirectly interfering with, obstructing, or in any way opposing or aiding others to oppose, the institution, maintenance, and control of any such suit by plaintiff.

VII.

That plaintiff recover of the defendants Sumter Electrical Company and Splitdorf Electrical Company the damages which plaintiff has suffered and the profits which said defendant corporations have made by reason of said defendant corporations' aforesaid infringement of plaintiff's rights under said Letters Patent, and that this cause be referred to Charles B. Morrison, Esq., a Master of this court, to take and state an account of the damages and profits so recoverable by plaintiff from said defendant corporations, and report the same to this court; and that said defendant corporations and their officers, agents, attorneys, clerks, servants, workmen, representatives, and all others in privity with them or under the control or the direction of either of them, be and they are hereby directed and required to attend before said Master from time to time as he shall direct, and to produce before him all such books, papers, vouchers, and documents and to submit to such oral examination as he may direct and require.

VIII.

That plaintiff recover of defendants, Sumter Electrical Company, and Splitdorf Electrical Company, its disbursements of this suit to be taxed, and have execution against said defendant corporations therefor.

IX.

That the defendants Henry Joseph Podlesak and Tesla Emil Podlesak have not heretofore made, used or sold devices in infringement of plaintiff's rights under any of said letters patent and that no sufficient proof of contributory in-

fringement thereof by them or either of them appears, and therefore that no injunction shall be issued nor accounting be had herein against them or either of them. The bill is dismissed as to the Podlesaks without costs.

A. L. SANBORN,
United States District Judge.

Entered April 4, 1919.

• • • • •

1050

PETITION FOR APPEAL.

P

Splitdorf Electrical Company, one of the defendants named in the above entitled cause, conceiving itself aggrieved by the decree made and entered in said cause on the 4th day of April, 1919, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Seventh Circuit, for the reasons specified in the assignment of errors which is filed herewith, and prays that the appeal may be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the said Court of Appeals.

Your petitioner further prays that said appeal may be allowed to operate as a supersedeas, and that the operation of said decree may be stayed and suspended pending a determination of said appeal.

SPLITDORF ELECTRICAL COMPANY,
By EDWARD RECTOR
DAVID B. GANN,
Its Solicitors.

• • • • •

1051

ASSIGNMENT OF ERRORS.

A

Now comes Splitdorf Electrical Company, one of the defendants in the above entitled cause, and says that in the record and proceedings therein there is manifest error, and that the District Court of the United States for the Northern District of Illinois, Eastern Division, erred in this, to-wit:

1. In entering the decree entered in said cause on April 4, 1919.
2. In decreeing any relief to the plaintiff against the de-

defendants Splitdorf Electrical Company and Sumter Electrical Company, or either of them, and in not dismissing the bill of complaint as to said defendants, and each of them.

3. In decreeing that United States Letters Patent No. 1,280,105, granted September 24, 1919, to plaintiff, Webster Electric Company on the application of Edmund Joseph Kane, for improvements in Electric Igniters, are good and valid in law, and that plaintiff Webster Electric Company is the sole and exclusive owner of said Letters Patent and of all rights and privileges thereunder; and in not decreeing 1052 that said Letters patent are invalid and void.

4. In decreeing that the defendants, Sumter Electrical Company and Splitdorf Electrical Company, or either of them, had infringed claims 3, 7 and 8 of said Letters Patent No. 1,280,105, and claims 1, 2, 3, 7, 8, 9, 15, 21 and 22 of said Letters Patent No. 13,878, and claims 1, 2, 3, 6, 11 and 12 of said Letters Patent No. 1,101,956, or either of said claims, or any claims of said Letters Patent or either of them, or had in any manner violated the rights of plaintiff under said Letters Patent or either of them.

5. In decreeing that a perpetual writ of injunction be issued against the said defendants Sumter Electrical Company and Splitdorf Electrical Company, or either of them, enjoining and restraining them, or either of them, and their officers, agents, attorneys, clerks, servants, workmen, representatives, and all others under the control or direction, of either of them, from directly or indirectly manufacturing, using, selling, disposing of, offering for sale, offering to dispose of, or advertising the machines exemplified by plaintiff's Exhibit No. 44, defendants' machine Type A; plaintiff's Exhibit No. 79, defendants' machine Type B; and plaintiff's Exhibit No. 45, defendants' machine Type C; or either of said machines, or from doing any of the things so enjoined and restrained; and from doing any of said things in respect to any other machine embodying the inventions claimed in claims 3, 7 and 8 of said Letters Patent No. 1,280,105, claims 1, 2, 3, 7, 8, 9, 15, 21 and 22 of said Letters Patent No. 13,878, or claims 1, 2, 3, 6, 11 and 12 of said Letters Patent No. 1,101,956, or either of said claims, and from in any manner infringing any of said claims or violating plaintiff's rights thereunder, and from in any manner aiding, assisting or cooperating with others so to do.

1053 6. In failing to find and decree that by virtue of the

rights acquired by the defendants Sumter Electrical Company and Splitdorf Electrical Company from the defendants Henry Joseph Podlesak and Tesla Emil Podlesak, to and under the said Letters Patent Reissue No. 13,878 and No. 1,101,956, said defendants, Sumter Electrical Company and Splitdorf Electrical Company, had the right and license to use the inventions described and claimed in said Letters Patent and each of them.

7. In failing to find and decree that because of the contractual relations existing between the plaintiff, Webster Electric Company, and the defendants Henry Joseph Podlesak and Tesla Emil Podlesak, and because of the rights vested in said Podlesaks under and by virtue of their contracts with the plaintiff, said plaintiff was and is estopped to assert the aforesaid, Kane patent No. 1,280,105, or any claim thereof, against the said Podlesaks or any assignee of their rights under their contracts with plaintiff, and that by virtue and because of the assignment by said Podlesaks of all of their rights under their said contracts to the defendants, Sumter Electrical Company and Splitdorf Electrical Company, said defendants became vested with all of the rights of said Podlesaks under their said contracts with plaintiff and were put in the same relation to the plaintiff as before existed between the plaintiff and said Podlesaks, and that the plaintiff therefore was and is estopped to assert said Kane patent, or any claim thereof, against the said defendants Sumter Electrical Company and Splitdorf Electrical Company.

8. In decreeing that a perpetual writ of injunction be issued against the defendants Sumter Electrical Company and Splitdorf Electrical Company, or either of them, enjoining and restraining them, or either of them, and their officers, agents, attorneys, clerks, servants, workmen, representatives, and all others under the control or the direction of either of them, from directly or indirectly using the name "Podlesak" on or in connection with the sale of, or in advertisement of any apparatus of the class described in said Letters Patents Nos. 947,647, 948,483, 1,003,649, 1,022,642, 1,056,360, 1,098,052, 1,098,754, 1,101,956 and reissue No. 13,878, or either of them.

9. In decreeing that a perpetual writ of injunction be issued against the said defendants Sumter Electrical Company and Splitdorf Electrical Company or either of them, enjoin-

ing and restraining them, or either of them, and their officers, agents, attorneys, clerks, servants, workmen, representatives, and all others in privity with them, or under the control of direction of either of them, from doing or procuring to be done anything in derogation of the right of plaintiff, Webster Electric Company, to institute, maintain and control suits, either in the name of Webster Electric Company, Splitdorf Electrical Company, Sumter Electrical Company, and others, or any of them, as plaintiff may determine, for the infringement of said United States Letters Patent Nos. 947,647, 948,483, 1,003,649, 1,002,642, 1,056,360, 1,098,052, 1,098,754, 1,101,956 or reissue No. 13,878, or either of them, and from directly or indirectly interfering with obstructing or in any manner opposing or aiding others to oppose the institution, maintenance, and control of any such suit by plaintiff.

10. In decreeing that plaintiff recover of said defendants Sumter Electrical Company and Splitdorf Electrical Company, or either of them, any damages or profits, and in referring the cause to a Master to take and state an account of damages and profits recoverable by plaintiff from 1055 said defendants, and report the same to the court; and in decreeing that said defendants and their officers, agents, attorneys, clerks, servants, workmen, representatives and all others in privity with them or under the control or the direction of either of them, attend before said Master from time to time as he shall direct, and produce before him all such books, papers, vouchers and documents, and submit to such oral examination, as he may direct and require.

11. In decreeing that plaintiff recover of said defendants Sumter Electrical Company and Splitdorf Electrical Company, or either of them, its disbursements of suit to be taxed, and have execution against said defendants, or either of them, therefor.

12. In failing to sustain the counter-claim of the defendants, Sumter Electrical Company and Splitdorf Electrical Company, and in failing to decree that Webster Electric Company, plaintiff, account to said defendants, as the successors in interest and assignees of the defendants, Podlesaks, for the royalties payable to said Podlesaks under the contracts set forth in the bill and answer and referred to in said counter-claim; and in failing to decree that said defendants, Sumter Electrical Company and Splitdorf Electrical Company,

recover of the plaintiff, Webster Electric Company, their costs of suit, to be taxed, and have execution against said plaintiff therefor.

SPLITDORF ELECTRICAL COMPANY,
Defendant,
 EDWARD RECTOR
 By DAVID B. GANN
Its Solicitors.

1056 * . . . *

ORDER ALLOWING APPEAL AND SUPERSEDEAS.

On motion of the solicitor for Splitdorf Electrical Company, defendant in the above entitled cause, it is ordered that the appeal of said defendant from the decree entered in said cause on the 4th day of April, 1919, be and the same is hereby allowed; and that upon the filing of a good and sufficient bond in the penal sum of five thousand dollars (\$5000.00), to be approved by the court, conditioned to secure to the plaintiff all profits, damages and costs that may be awarded against said defendant, and the filing of cost bond in the sum of two hundred dollars (\$200.00), said appeal shall operate as a supersedeas.

And defendant having filed, and submitted to the court for its approval, supersedeas and cost bonds in the amounts above specified, it is further Ordered that said bonds be and the same are hereby approved, and that said appeal operate as a supersedeas, and that the operation of said decree appealed from be stayed and suspended until a determination of said appeal.

A. L. SANBORN
U. S. District Judge

1057 * . . . *

COST BOND ON APPEAL

Know All Men by these Presents that we, Splitdorf Electrical Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, as principal, and United States Fidelity & Guaranty Company a Maryland Corporation as surety, are held and firmly bound unto Webster Electric Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, in the full and just sum of Two Hundred Dollars

Supersedeas Bond.

(\$200.00) to be paid to said Webster Electric Company, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 15th day of April, 1919.

Whereas, heretofore, on April 4, 1919, at a session of the United States District Court, for the Eastern Division of the Northern District of Illinois, in a suit pending in said court between said Webster Electric Company, plaintiff, and 1058 said Splitdorf Electrical Company and others, defendants, a decree was rendered in favor of said plaintiff, granting an injunction and accounting against said Splitdorf Electrical Company, defendant, with plaintiff's costs and disbursements to be taxed:

And whereas, said Splitdorf Electrical Company has prayed and been allowed an appeal from said decree to the United States Circuit Court of Appeals for the Seventh Circuit;

Now the condition of the above obligation is such that if the said Splitdorf Electrical Company shall prosecute its said appeal to effect, and shall answer all damages and costs decreed against it if it shall fail to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

SPLITDORF ELECTRICAL CO

(Corp Seal)

By P J LANDEMORE

Attest:

Treasurer.

R W SUTHERLAND

Secretary.

(Seal)

UNITED STATES FIDELITY & GUARANTY COMPANY

(Corp Seal)

By S. FRANK HEDGES

Attest:

Attorney in Fact

WILLIAM H. ESTWICK

Attorney in Fact.

(Endorsed) Filed Apr. 22, 1919, T. C. MacMillan, Clerk.
1059 *

SUPERSEDEAS BOND

Know All Men by these Presents that we, Splitdorf Electrical Company, a corporation organized and existing under and by virtue of the laws of the State of New Jersey, as principal, and United States Fidelity & Guaranty Company, a Maryland Corporation, as surety, are held and firmly bound unto Webster Electric Company, a corporation organized and

existing under and by virtue of the laws of the State of Wisconsin, in the full and just sum of Five Thousand Dollars (\$5,000.00) to be paid to said Webster Electric Company, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 15th day of April, 1919.

Whereas, heretofore, on April 4, 1919, at a session of the United States District Court, for the Eastern Division of the Northern District of Illinois, in a suit pending in said court between said Webster Electric Company, plaintiff, and 1060 said Splitdorf Electrical Company and others, defendants, a decree was rendered in favor of said plaintiff, granting an injunction and accounting against said Splitdorf Electrical Company, defendant, with plaintiff's costs and disbursements to be taxed;

And whereas, said Splitdorf Electrical Company has prayed and been allowed an appeal from said decree to the United States Circuit Court of Appeals for the Seventh Circuit;

Now the condition of the above obligation is such that if the said Splitdorf Electrical Company shall prosecute its said appeal to effect, and shall answer all damages and costs decreed against it if it shall fail to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

SPLITDORF ELECTRICAL CO

By P J LANDEMORR

Treasurer

(Corp Seal)

Attest:

R. W. SUTHERLAND

Secretary.

UNITED STATES FIDELITY & GUARANTY COMPANY

by S. FRANK HEDGES

Attorney-in-Fact

(Corp Seal)

Attest:

WILLIAM H. ESTWICK

Attorney in Fact

(Seal)

(Endorsed) Filed April 22-1919, T. C. MacMillan, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

27.

For the Seventh Circuit.

Splitdorf Electrical Company,	}
<i>Defendant-Appellant</i>	
2784 vs.	}
Webster Electric Company,	
<i>Plaintiff-Appellee.</i>	

STIPULATION.

It is hereby stipulated by and between counsel for the respective parties to the above entitled cause that the Clerk of the Court of Appeals may add to the transcript therein, and print at the proper place in the printed record, the attached copy of the order of May 6, 1919, in said cause, which was inadvertently omitted from said transcript.

WILLIAMS, BRADBURY & LEE,
Counsel for Plaintiff-Appellee.

EDWARD RECTOR
Of Counsel for Defendant-Appellant

(Endorsed) Filed Jan. 26, 1920. Edward M. Holloway,
Clerk.

19.

ORDER.

Pursuant to stipulation of parties filed herein, and on motion of solicitor for the defendant-appellant Splitdorf Electrical Company, it is hereby Ordered that the time within which said defendant-appellant shall docket its appeal in this cause and file the record thereof with the Clerk of the Court of Appeals be and the same is hereby enlarged and extended to and including July 1, 1919.

A. L. SANBORN
U. S. District Judge.

May 6, 1919.

ORDER

June 27, 1919.

Present: Hon. George T. Page, Circuit Judge.

Pursuant to the stipulation of the parties filed herein, and for good cause shown, it is ordered that the time within which the defendant-appellant Splitdorf Electrical Company shall docket its appeal and file the record thereof with the Clerk of the Court of Appeals be and the same is hereby extended to and including August 31, 1919.

Judge.

1062 * * * *

ORDER

August 21-1919.

Pursuant to the stipulation of the parties filed herein, and for good cause shown, it is ordered that the time within which the defendant-appellant Splitdorf Electrical Company shall docket its appeal and file the record thereof with the Clerk of the Court of Appeals be and the same is hereby extended to and including September 30, 1919.

SAMUEL ALSCHULER

Judge.

1063 * * * *

ORDER

Sept. 22-1919.

Pursuant to the stipulation of the parties filed herein, and for good cause shown, it is ordered that the time within which the defendant-appellant Splitdorf Electrical Company shall docket its appeal and file the record thereof with the Clerk of the Court of Appeals be and the same is hereby extended to and including October 31, 1919.

Enter:

CARPENTER

Judge.

22 Sept. 1919.

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PRAECIPE FOR TRANSCRIPT

To the Clerk of the Court:

You are respectfully requested to prepare and forward to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit a transcript of the record in the above entitled cause for use in connection with the appeal therein from the decree entered in said cause of April 4, 1919, and to include in said transcript the following papers, proceedings and exhibits, eto-wit:

All of the pleadings, including the exhibits attached to and forming part thereof.

Statement of evidence in narrative form.

All exhibits introduced in evidence by either party.

Opinion of Court filed February 13, 1919.

Decree entered April 4, 1919.

Petition on appeal.

Assignment of errors.

Order allowing appeal and supersedeas.

Cost Bond on appeal.

Supersedeas bond

Citation.

Orders of court enlarging and extending time for docketing appeal and filing transcript of record in the United States Circuit Court of Appeals.

Præcipe for transcript.

Stipulation.

EDWARD RECTOR

DAVID B. GANN

Solicitors for Defendant

Splitdorf Electrical Company

(Endorsed) Filed Oct. 29-1919, John H. R. Jamar, Clerk.
1066 * * * * *

STIPULATION.

It is hereby stipulated and agreed by and between counsel for the respective parties to the above entitled cause that the Clerk may certify the foregoing pages to the United States Circuit Court of Appeals as a full response to the praecipe for the transcript on appeal in this cause, and as a true transcript of the record upon such appeal.

It is further stipulated that the Clerk may send to the Clerk in the United States Circuit Court of Appeals all of the original exhibits in this cause, both documentary and physical instead of including copies of any thereof in said transcript.

WILLIAMS, BRADBURY & SEE,
Solicitors for Plaintiff.
 EDWARD RECTOR,
 DAVID B. GANN,
Solicitors for Defendant,
Splitdorf Electrical Company.

(Endorsed) Filed Oct 29 1919 John H R Jamar Clerk

1067 (Endorsed) copy 553 Webster Electric Co., vs Splitdorf Electrical Company, et al, Stipulation. Filed Oct 29 1919 at o'clockM John H. R. Jamar Clerk

1068 Northern District of Illinois }
 Eastern Division } ss.

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled Webster Electric Company, plaintiff, vs. Henry Joseph Podlesak, Tesla Emil Podlesak, Sumter Electrical Company, and Splitdorf Electrical Company, Defendants, No. 553, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this day of October, A. D. 1919.

JOHN H R JAMAR
Clerk.

(Seal)

1069

Copy

United States }
of America, } ss.

The President of the United States, To Webster Electric Company Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Splitdorf Electrical Company is appellant and you are appellee to show cause, if any there be, why the decree rendered against the said Splitdorf Electrical Company as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable A L Sanborn Judge of the District Court of the United States, this 22nd day of April, in the year of our Lord one thousand nine hundred and nineteen

(Signed) A. L. SANBORN

Judge

Service of the foregoing citation acknowledged this 22nd day of April, 1919.

WILLIAMS BRADBURY & LEE

*Solicitors for Webster Electric
Company Appellee*

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from 1 to 822, inclusive, contain a true copy of the printed record printed under my supervision which together with the printed book of exhibits constitutes the record upon which the following cause was heard and determined

Splitdorf Electrical Company

vs.

Webster Electric Co.

No. 2769, October Term, 1921, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-fifth day of July, 1922.

(Seal) EDWARD M. HOLLOWAY,
*Clerk of the United States Circuit Court of
Appeals for the Seventh Circuit.*



At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States court room in the City of Chicago, in said Seventh Circuit, on the seventh day of October, 1919, of the October term, in the year of our Lord one thousand nine hundred and nineteen, and of our independence the one hundred and forty-fourth.

And afterwards, to wit, on the seventh day of November, 1919, in the October term last aforesaid, there was filed in the office of the Clerk of this Court a certain appearance of counsel for appellant, which said appearance is in the following words and figures, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 2769. October Term, 1919.

Splitdorf Electrical Company }
 vs.
Webster Electric Company. }

The Clerk will enter my appearance as Counsel for the Appellant.

EDWARD RECTOR.

Note.—Must be signed by a member of the Bar of the United States Circuit Court of Appeals, for the Seventh Circuit. Individual and not firm names must be signed.

Endorsed: Filed Nov. 7, 1919. Edward M. Holloway, Clerk.

And afterwards, to wit, on the twenty-sixth day of January, 1920, in the October term last aforesaid, there were filed in the office of the Clerk of this Court a certain stipulation with an order entered in the District Court attached, the said stipulation and order are in the following words, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Filed Jan. 26, 1920, Edward M. Holloway, Clerk.

Splitdorf Electrical Company,	}
Defendant-Appellant,	
2769 vs.	
Webster Electric Company,	
Plaintiff-Appellee.	}

STIPULATION.

It is hereby stipulated by and between counsel for the respective parties to the above entitled cause that the Clerk of the Court of Appeals may add to the transcript therein, the print at the proper place in the printed record, the attached copy of the order of May 6, 1919, in said cause, which was advertently omitted from said transcript.

WILLIAMS, BRADBURY & LEE,

Counsel for Plaintiff-Appellee.

EDWARD RECTOR,

Of Counsel for Defendant-Appellant.

UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division.

Webster Electric Company,	} In Equity No. 553.
<i>Plaintiff,</i>	
<i>vs.</i>	
Henry Joseph Podlesak, Tesla Emil Podlesak, Sumter Electrical Com- pany, and Splitdorf Electrical Company,	

ORDER.

Pursuant to stipulation of parties filed herein, and on motion of solicitor for the defendant-appellant Splitdorf Electrical Company, it is hereby Ordered that the time within which said defendant-appellant shall docket its appeal in this cause and file the record thereof with the Clerk of the Court of Appeals be and the same is hereby enlarged and extended to and including July 1, 1919.

A. L. SANBORN,
U. S. District Judge.

May 6, 1919.

And afterwards, on the same day, to wit: on the twenty-sixth day of January, 1920, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

Monday, January 26, 1920.

Court met pursuant to adjournment.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.

Hon. Samuel Alschuler, Circuit Judge.

Hon. Evan A. Evans, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Edward M. Holloway, Clerk.

Before:

Hon. Samuel Alschuler, Circuit Judge.

Splittorf Electrical Company	} Appeal from the District Court Court of the United States for the Northern District of Illinois, Eastern Division.
vs.	
Webster Electric Company.	}

Upon the filing of a stipulation of counsel, it is ordered that a copy of the order of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered on May 6, 1919, be, and the same is hereby added to the transcript of the record in this cause and be printed in the proper place in the printed record.

And afterwards, to wit: on the twentieth day of April, 1920, in the October term last aforesaid, there were filed in the office of the Clerk of this Court certain appearances of counsel, which said appearances are in the following words and figures, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1919.

Webster Electric Company }
 vs. } No. 2769.
Splitdorf, etc. }

The Clerk will enter my appearance as Counsel for the Webster Electric Company.

BENJAMIN V. BECKER.

Note—Must be signed by a member of the Bar of the United States Circuit Court of Appeals, for the Seventh Circuit. Individual and not firm names must be signed.

Endorsed: Filed April 20, 1920. Edward M. Holloway, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1919.

Webster Electric Company }
 vs. } No. 2769.
Splitdorff, etc. }

The Clerk will enter my appearance as Counsel for the Webster Electric Company.

JEROME N. FRANK.

Note—Must be signed by a member of the Bar of the United States Circuit Court of Appeals, for the Seventh Circuit. Individual and not firm names must be signed.

Endorsed: Filed April 20, 1920. Edward M. Holloway, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1919.

Webster Electric Company }
 vs. } No. 2769.
Splittdorff, etc. }

The Clerk will enter my appearance as Counsel for the Webster Electric Company.

IRWIN T. GILRUTH.

Note—Must be signed by a member of the Bar of the United States Circuit Court of Appeals, for the Seventh Circuit. Individual and not firm names must be signed.

Endorsed: Filed April 20, 1920. Edward M. Holloway, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1919.

Webster Electric Company }
 vs. } No. 2769.
Splittdorf, etc. }

The Clerk will enter my appearance as Counsel for the Webster Electric Company.

JOHN P. BARNES.

Note—Must be signed by a member of the Bar of the United States Circuit Court of Appeals, for the Seventh Circuit. Individual and not firm names must be signed.

Endorsed: Filed April 20, 1920. Edward M. Holloway, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1919.

Splitdorf Electrical Co.,
 Appellant, }
 vs. } No. 2769.
Webster Electric Co.,
 Appellee. }

The Clerk will enter my appearance as Counsel for the Appellee.

LIVINGSTON GIFFORD,
LYNN A. WILLIAMS,
CLIFFORD C. BRADBURY,
ROBERT M. SEE.

Note—Must be signed by a member of the Bar of the United States Circuit Court of Appeals, for the Seventh Circuit. Individual and not firm names must be signed.

Endorsed: Filed April 20, 1920. Edward M. Holloway,
Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

October Term, 1919.

Splitdorf Electrical Co. }
 vs. } No. 2769.
Webster Electric Co. }

The Clerk will enter our appearance as Counsel for the Appellant.

DAVID B. GANN.

CHARLES L. STURTEVANT,

Washington, D. C.

EUGENE G. MASON.

Note—Must be signed by a member of the Bar of the United States Circuit Court of Appeals, for the Seventh Circuit. Individual and not firm names must be signed.

Endorsed: Filed April 20, 1920. Edward M. Holloway, Clerk.

Tuesday, October 5, 1920.

Court opened by proclamation of crier.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the City of Chicago in said Seventh Circuit on the fifth day of October, 1920, of the October term in the year of our Lord One Thousand Nine Hundred and Twenty and of our Independence the One Hundred and Forty-fifth.

And afterwards, to wit: on the fifth day of October, 1920, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.

Hon. Samuel Alschuler, Circuit Judge.

Hon. Evan A. Evans, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Edward M. Holloway, Clerk.

John J. Bradley, Marshal.

Before:

Hon. Francis E. Baker, Circuit Judge.

Hon. Samuel Alschuler, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Splitdorf Electrical Company	}	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
2769 <i>vs.</i>		
Webster Electric Company.		

It is ordered by the Court that this cause be, and the same is hereby set down for hearing on November 4, 1920.

And afterwards, to wit: on the fourth day of November, 1920, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

Thursday, November 4, 1920.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.

Hon. Samuel Alschuler, Circuit Judge.

Hon. Evan A. Evans, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Edward M. Holloway, Clerk.

John J. Bradley, Marshal.

Before:

Hon. Francis E. Baker, Circuit Judge.

Hon. Evan A. Evans, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Splitdorf Electrical Company	}	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
2769 vs.		
Webster Electric Company.		

Now this day come the parties by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. Edward Reector, counsel for appellant, and by Mr. Livingston Gifford, counsel for appellee, and the court having heard the same takes this matter under advisement.

And afterwards, to wit: on the fifth day of February, 1921, in the October term last aforesaid, there was filed in the office of the Clerk of this Court a certain opinion, which said opinion is in the following words and figures, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,
For the Seventh Circuit.

No. 2769. October Term, 1920, January Session, 1921.

Splitdorf Electrical Company,	} Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
<i>Appellant</i>	
<i>vs.</i>	
Webster Electric Company,	}
<i>Appellee.</i>	

Before BAKER, EVANS and PAGE, *Circuit Judges*.

EVANS, *Circuit Judge*: The present appeal involves three patents, the determination of two of which, Nos. 1,101,956 and reissue No. 13,878, turns upon a certain agreement made between the patentees, Henry and Emil Podlesak, and appellee. The assignable rights of the patentees in these two patents were, prior to the commencement of this suit, assigned to appellant.

The Podlesaks entered into two license agreements with appellee on the same date, Feb. 5, 1914. These contracts were subsequent to other contracts made between the same parties and out of which difficulties had arisen. One of these simultaneously executed agreements deals with six patents, two of which are the ones above enumerated and in which alone we are concerned. The other agreement was an exclusive license contract affecting other patents, none of which are before us. The latter contract, therefore, is of importance only as it may bear on the construction of the one under consideration.

The so-called "License Agreement (Shop Right)" is in part set forth at the bottom of this opinion for reference sake. The difference between counsel is limited to the assignable rights of the Podlesaks. The trial judge accepted the urge of appellee and found from the entire agreement an intention to deny to the patentees any assignable reserved right to make and sell the patented articles.

Prior to entering into this agreement, patentees had the unlimited right to make and sell their patented articles and this right was of course assignable in whole or in part. They likewise had the right to exclude all others from making or selling the articles. To what extent were these rights restricted, if at all, by this agreement?

The precise language of the contract is significant. After first reciting that appellee

"is desirous of securing a *shop right* and license to manufacture, use and sell the invention"

it provided by its only granting clause

"that patentees do hereby grant unto the party of the second part a *shop right* and license to manufacture, use

LICENSE AGREEMENT.

(SHOP RIGHT.)

• • • • •

And Whereas the party of the second part is desirous of securing a shop right and license to manufacture, use, and sell the inventions and improvements, described and claimed in above said patents, and applications for patents, all or any one of them, the validity of which patents, granted or to be granted, is admitted and to bring and maintain suits against infringers of the patent rights covering the said inventions, within and throughout the United States of America and Territories thereof, and for and during the life of any and all of the patents, and patents that may be granted, on any of the applications described below, or any of them:

Now, Therefore in consideration of One Dollar (\$1.00) by the party of the second part to the parties of the first part, in hand paid, and of the covenants and agreements of the party of the second part, hereinafter expressed and to be kept and performed, the parties of the first part do hereby grant unto the party of the second part a shop right and license to manufacture, use, and sell the inventions or improvements, and each and every one of them, described, set forth and claimed in said patents, numbers 1,022,642, 1,055,076 and 1,056,360, and said applications, serial numbers 734,143; 668,153; and 639,738 and any division or divisions thereof, within and throughout the United States of America and Territories and Possessions thereof, for and during the term of said patents or any of them; and the parties of the first part agree that they have good right and lawful authority to grant said shop right and license, and that they have not heretofore parted with any right, license or privilege inconsistent therewith and that they will not, while this shop license to the party of the second part is in force, give or grant shop licenses to others to make, use, or sell hereinsaid inventions, expressly reserving, however, the right to themselves to make, use and sell the hereinsaid inventions.

Second: The parties of the first part agree to and with the party of the second part that they, and each of them will aid and assist each other in the prosecution of said applications and the obtaining of patents thereon and in any interference proceeding relating to their right of priority to said inventions, and in any suit or proceeding brought under any of the said patents or for the infringement of any patents by reason of the manufacture, use or sale, by the party of the second part of the inventions described in said patents or applications; provided, however, that said parties of the first part shall not be called upon to pay out or expend any money in any suit or proceeding relating to the said inventions, and the parties of the first part hereby appoint the attorney for the party of the second part as their agent and

and sell the inventions * * * set forth and claimed in said patents."

The patentees further agreed, and this is significant because it is this agreement that appellee relies upon in support of its contention, that they

"will not * * * give or grant *shop rights to others* to make, use or sell hereinsaid inventions."

Patentees immediately thereafter provided as follows:

"expressly reserving, however, the right to themselves to make, use and sell the hereinsaid inventions."

After numerous other provisions,

"it is agreed that this assignment shall extend to and be binding upon the heirs, *assigns*, and legal representatives of the party of the first part, and the successors and *assigns* of the party of the second part."

We have, then, a contract, the legal effect and the express provisions of which provide for patentees' right to manufacture and sell, and further that such rights as patentees reserved are expressly made assignable. It would therefore seem to follow inevitably that appellant, by its purchase of

attorney for the purpose of joining them as parties complainant where necessary or desirable, in any suit which the party of the second part may wish to bring on account of the infringement of any of said Letters Patent or any patent which may be granted upon their aforesaid applications, the said attorney for the party of the second part to have the power to execute as the attorney and agent of the parties of the first part any papers which may be necessary or convenient to the commencement and maintenance of any such suit, it being expressly understood and agreed, however, that the parties of the first part are not to be put to any expense or to be required to expend any moneys, on account of any such infringement suits to which they may be made parties complainant, and it is expressly understood and agreed, further, that the said parties of the first part shall be exempt from liability in damages or court costs resulting from any law suits in which the parties of the first part may thus be joined with the party of the second part, the party of the second part agreeing to assume the payment of any and all damages and court costs that may result from any such suits.

* * * * *

Sixth: The party of the second part agrees that it will, except as hereinafter provided, use any devices manufactured under this shop license only in connection with, or for repairs to, the device manufactured under license which is covered by the agreement made on February 5th, 1914, by which the parties of the first part give to the party of the second part the exclusive and sole right to manufacture ignition devices covered by patents No. 947,647, of January 25, 1910, Inductor Generators for Ignition Purposes, No. 949,483, issued February 8, 1910, Inductor Generators for Ignition Purposes, and No. 1,003,649, issued September 19, 1911, Inductor Generators for Ignition purposes, and that whenever the devices covered by this shop right and license are made and sold and delivered not as a part, or, or for use in connection with, the devices manufactured and sold under the aforesaid exclusive license dated February 5th, 1914, then the party of the second part agrees that it will on the day of each and every report pay to the parties of the first part, jointly as a royalty or license fee, five per cent (5%) of all moneys or the

patentees' rights, acquired the right to make and sell the patented articles.

But appellee stresses the provision (par. No. 8) as well as the provision found in par. No. 3, contending that covenant 8 negatives any intention to reserve any assignable right to make and sell the patented articles.

We are, however, unable to draw any deductions from par. 8 favorable or unfavorable to appellee. This provision added nothing to the rights of either party. It was surplusage. For certainly new or added agreements might be made respecting shop rights or other licenses, provided the parties agreed to them in writing.

As to covenant No. 3, we see nothing absolutely inconsistent between it and the assignability clause of the agreement, while there is a fatal inconsistency between such assignability clause and appellee's position. For assignment by patentees of all their rights including the right to make and sell is not necessarily inconsistent with the assignor's agreement not to execute a shop right to others. The court's duty, if possible,

equivalent thereof, which they may have received or that may be due them from the sales of or in exchange for the devices covered by this shop right and license sold and delivered during the preceding quarter. It is further expressly understood and agreed that the said devices manufactured embodying above improvements, or any of them, are not to be sold for less than a fair and reasonable price, based upon manufacturing and trade conditions.

Eighth: The party of the second part, with the approval, in writing, of the parties of the first part, shall have right to grant shop right or license for the manufacture, use and sale of devices embodying the invention described and claimed in said patents No. 1,022,642 and No. 1,055,076, to makers of, or dealers in, gas engines, and gas engine accessories, but such shop rights or licenses so granted by the party of the second part shall be on and with the same terms and limitations as hereinbefore set forth, namely; that the devices made under such shop right license shall be used only in connection with, or for repairs for or to, devices made under the hereinbefore mentioned patents No. 947,647,—948,483,—1,003,649, and 1,056,360 and any patents that may be granted on the hereinbefore mentioned applications Serial Nos. 734,143, 668,153, and 639,738, or any of them, and in no other way. The parties of the first part may approve any such shop right or license, to be granted by the party of the second part, either personally or by attorney, or agent.

Ninth: The party of the second part agrees that it shall not permit or encourage other parties to manufacture, use, or sell devices covered by hereinbefore mentioned patents, or patents that may be granted on hereinsaid applications, or any of them, except as, and on terms and limitations hereinbefore set forth, relative to said shop licenses under patents No. 1,022,642 and No. 1,055,076. It is further agreed and understood that this shop license becomes terminated in the case or event the license given in the said agreement of February 5, 1914, becomes, terminated by manner therein provided for.

Finally, It is agreed that this agreement shall extend to and be binding upon the heirs, assigns, and legal representatives of the parties of the first part, and the successors and assigns of the party of the second part.

is to reconcile the two provisions and give effect to both. At least, in any doubtful case, the express provision authorizing assignment must control over a negative agreement which at best only inferentially questions patentees' right to assign their right to make and manufacture.

But further reasons for such conclusion appear. Why did the parties make two agreements instead of one? If the parties intended to give an exclusive license as to some patents and to reserve, as to others, merely the right to make and manufacture the article, it could have been easily so provided and in a single agreement. Why did the parties so carefully throughout the agreement refer to appellee's grant as a "shop right"? If appellee's position be tenable, it secured more than a shop right,—it secured an exclusive license excepting only that patentees reserved the mere personal non-assignable right to make the article. Further queries are suggested. If appellee's position is tenable, would the reserved right to make and sell die with the parties? Could the parties exercise the right as copartners or as a corporation wherein they were the sole stockholders? If one wished to exercise the right and the other did not, were their hands tied?

While we are satisfied that an examination of the contract as heretofore pointed out leads but to one conclusion, these queries are suggested merely to offer additional reasons for concluding that the parties intended to reserve an assignable right to make and sell the patented article.

Again, by par. 3, patentees at most merely agreed not to execute to others, *shop rights*. The words "to others" indicate that the parties were contracting with respect to individuals or corporations *other* than the parties to the contract. In assigning their rights to appellant, patentees were not executing shop rights.

Much stress has been laid on the asserted "equities of the case". We are, however, unable to recognize their pertinency. The contract between appellee and patentees was voluntarily executed. It fixed the rights of both parties. Any enhancement in the value of the patent was unquestionably mutually advantageous. Whether patentees were guilty of ingratitude to their former employers in selling the reserved rights in the patent to a business competitor of such employer is beside the question. That certain rights were reserved by patentees is conceded. That such reserved rights

as were assignable were sold to appellant is also conceded. As between appellant and appellee, then, the issue is solely and simply a question of the extent of the assignable rights so reserved.

THE KANE PATENT. Numerous defenses to the suit, on the Kane patent No. 1,280,109 are presented. Estoppel, invalidity, (based on several grounds) and non-infringement, are all set forth and elaborated and ably argued by both counsel. Whether the specifications as originally drawn are sufficient to support claims seven and eight, inserted some eight years after the application was filed, is a question which we find it unnecessary to determine. Likewise, we are not called upon to disturb the finding of the district court in favor of Kane and against the Milton patent on the issue of priority. We are likewise not called upon to determine whether appellee is estopped to assert certain contested claims in this patent. We have, in other words, concluded that claims seven and eight are invalid for want of patentable novelty.

These two claims read as follows:

"7. In an electrical ignition device for internal combustion engines, the combination of a magneto generator comprising rotor and stator and generating winding, a pair of relatively movable make and break spark electrodes adapted to be located within an engine cylinder, spring means tending normally to hold said rotor in a certain position, mechanism whereby the movement of the rotor effects the separation of said electrodes at a predetermined point in the movement of the rotor, *a rigid unitary and integral support upon which all of the aforesaid parts are mounted*, whereby all of said parts may be removed from and returned to their position upon an engine cylinder without disturbing their relations one to another, conductors for carrying electric current from said generating winding to said electrodes, and engine driven means adapted to oscillate said rotor against the action of said spring means and then to release it.

"8. In an electrical ignition device for internal combustion engines, the combination of a magneto generator comprising rotor and stator and generating winding, a pair of relatively movable make and break spark electrodes adapted to be located within an engine cylinder, spring means tending normally to hold said rotor in a certain position, mechanism whereby the movement of the rotor effects the separation of said electrodes at a

predetermined point in the movement of the rotor, a *supporting member upon the several parts of which all of the aforesaid mechanism is mounted and having a single integral part adapted to be attached to the engine*, whereby all of said mechanism may be removed from the engine by removing said single integral part and may be returned to its position upon the engine with unchanged relations between any and all of the parts of all of said mechanism, thereby insuring the predetermined synchronism and interrelated adjustment of said mechanism when it is replaced upon the engine, and engine driven means adapted to oscillate said rotor against the action of said spring means and then to release it."

The italicized words mark the asserted novelty upon which invention is predicated.

The claims, read alone and without the background of any prior art, appear impressive. To contribute anything that would tend to produce perfect or more exact synchronism between the separation of the electrodes and the tripping of the magneto armature, and between the production of the spark and the cycle of the engine may indeed be accepted as *prima facie* evidence of inventive skill.

But a more thorough study and analysis of these claims as well as an examination of the specifications and the drawings, discloses that Kane was not dealing with the afore-referred to synchronism as such,—was not dealing with the arrangement or the adjustment of the parts of an oscillating magneto, but in respect to these two cooperating parts, he merely connected the magneto generator with the igniter block so that the two might be removed and repaired *as a unitary structure*. True, the removal of such a unitary structure may have made it possible to retain the adjusted relation of the cooperating parts, but it can hardly be said to have in any way affected synchronism as such or the cooperation of the parts of the magneto ignition. Thus explained, without any prior art to enlighten us, it would hardly evidence inventive skill to provide

"a rigid unitary and integral support upon which all of the aforesaid parts are mounted"

or to provide

"a supporting member upon the several parts of which all of the aforesaid mechanism is mounted, and having a single integral part adapted to be attached to the engine"

Kane's structure and his contribution are described by appellant's counsel as follows:

"In this device the magneto and the igniter plug are no longer separated, but are brought into one unitary structure with no link mechanism intervening between the movable electrode and the armature shaft. The spark plug has a flange, which is bolted against the engine cylinder, and this flange carries an integral arm on which the magneto and its associated mechanism are directly mounted. * * * The magneto and the spark plug and the cooperating mechanism are all part of a single unitary structure."

Again,

"When it is necessary to clean the spark plug or to test or adjust the mechanism, the whole unitary structure may be removed, and its operation adjusted and its spark observed in the open, and it may then be put back on the engine with the absolute assurance that it will function in operative position, precisely as it did when removed from the engine."

Was it, then, assuming that Kane was the contributor of this advance, patentable novelty to provide the means whereby the generator was supported by an arm running from the spark plug? Or, in other words, having two elements in a machine which function together, was the mere fixture of the relative position of these two elements, invention?

Unfortunately for appellee, the record contains some pertinent prior art citations. It is necessary to refer to but one, the patent to Weber, No. 820,535. This patent dealt with "an electric igniter and explosive engine". In the specification we find the following description:

"In order that the crank arm and the hammer arm may hold their relative positions with respect to each other intact, I prefer to mount the plate or board upon a horizontal bracket; the inner end of which is provided with a vertical flange secured rigidly to the igniter block."

In other words, this patent discloses an oscillating magneto, the parts of which are mounted upon and carried by the igniter block. It does not appear, however, that the support which operates in connection with the oscillating armature is integrally attached to the igniter block.

But we are, in this instance, not interested in the manner of attachment. Rather must we direct our attention to the

asserted patentable novelty residing in these two claims, seven and eight, which novelty is limited to the mounting of the magneto generator upon the igniter block so that the two may be removed or replaced as a single or unitary structure, thereby retaining the adjusted (and presumably proper) relation of the cooperating parts.

The fact that the Weber patent fails to disclose a mounting element integral with the igniter block is not sufficient to distinguish the citation when it appears that Weber's two elements are rigidly secured together. In other words, it is quite immaterial whether the mounting of the generator upon the block is by a single piece which is integral with the block, or by two pieces securely fastened together. The essence of the contribution was the *unitary structure* made possible by the rigidly and inseparably connected parts, the magneto generator, and the unitary block.

Even if the Weber structure were to fail as a complete anticipation because the generator is not *integrally* connected to the igniter block and because the support aforementioned is not mounted upon the shaft which carries the generator, it nevertheless remains as a valuable citation of the prior art bearing on appellant's defense of invalidity. It sufficiently points the way to a unitary structure so as to preclude any argument being successfully advanced that invention may be predicated upon the introduction of such an element connecting the generator and the plug.

Other prior art citations appear, and may well be referred to, but we are inclined to the view that invention is not disclosed where the only contributions consists of uniting two cooperating elements such as are here disclosed. When once it was made to appear that in the removal of these parts their relation would or possibly might be broken and their predetermined adjustment disturbed, it required but the work of a mechanic to integrally connect them so that synchronism would not be destroyed in their removal or in their replacement. We therefore refrain from further reference to the prior art citations. Certainly with the teachings of Weber before us, the *prima facie* presumption of invention in Kane's contribution is overcome.

Claim three of the Kane patent reads as follows:

"3. In a device of the class described, the combination of a field magnet, an inductor mounted for oscillation within the field magnet, a pair of main actuating

springs, each connected at one end with the field magnet frame, an integral yoke member rigidly connected with the inductor, the main actuating springs being connected at their free ends with the said yoke member, an operating arm constituting a part of the integral yoke member and adapted to be engaged by a reciprocating member driven by an internal combustion engine, separable contact points within the combustion chamber of the internal combustion engine, a light spring tending to maintain the closure of the electrical contacts, and mechanism adapted to be engaged by a cam surface on the yoke member to cause the separation of said contacts in opposition to the tension of the said light spring."

While its validity is also challenged for various reasons, our inquiry has been limited to the defense of non-infringement. The elements which we do not find in appellant's structure have been italicized. We have examined the record and the drawings with the result that we agree with defendant's expert when he said:

"I am unable to find in defendant's type A device the structure, combination, set forth in claim 3 of the Kane patent in suit * * * for the reason that the claim distinctly and definitely calls for its main actuating springs to be connected at one end with the field magnet frame, and for the reason that it definitely calls for the integral yoke member to be rigidly connected with the inductor, neither of which characteristics is true of Defendants' type A device."

The same witness likewise distinguished appellant's type B while the court held that its type C did not infringe this claim three.

Appellee does not dispute the distinction thus pointed out, but asserts that appellant's structure in the respects just alluded to is the mechanical equivalent thereof, and infringement is therefore shown.

We are therefore called upon to determine what breadth we shall give to the claim,—how strictly we shall hold patentee to the literal language of this claim.

Under the circumstances of this case, in view of the history disclosed by the files,—the character of this claim,—we conclude that appellant's structure is not the equivalent

of that described by Kane in claim 3, and infringement does not appear.

The decree is reversed with directions to dismiss.
A true Copy.

Teste:

*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

And afterwards, on the same day, to wit, on the fifth day in February, 1921, the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

Saturday, February 5, 1921.

Court met pursuant to adjournment.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.

Hon. Samuel Alschuler, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Edward M. Holloway, Clerk.

Before:

Hon. Francis E. Baker, Circuit Judge.

Hon. Evan A. Evans, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Splitdorf Electrical Company	}	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
2769 vs.		
Webster Electric Company.		

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court with directions to dismiss.

And afterwards, to wit: On the seventh day of March, 1921, in the October term last aforesaid there was filed in the office of the clerk of this court a certain motion and notice, which said motion and notice is in the following words and figures, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS,
For the Seventh Circuit.

No. 2769.

Splitdorf Electrical Company,
Defendant-Appellant,
vs.
Webster Electric Company,
Plaintiff-Appellee.

MOTION FOR ORAL ARGUMENT ON PETITION FOR
REHEARING.

Plaintiff-appellee moves that the court grant leave for oral argument as to the determination of appellee's petition for rehearing filed herewith.

Our petition for rehearing is directed solely to the question whether claims 7 and 8 of the Kane patent No. 1,280,105 involve patentable invention over the prior art. The petition does not seek the reconsideration of any matter which *was* considered and decided in the court's opinion, but is based wholly upon a vital matter of fact as to which the court's opinion *is silent* but which cannot be ignored in reaching a just conclusion as to the validity of these claims.

The original submission of the case involved the consideration of many complicated questions. The court has considered and decided the effect of the contracts between the Webster Company and the Podlesaks, and has fully considered and decided the validity and scope of claim 3 of the Kane patent. As to these questions, we have nothing more to say.

But the court also held claims 7 and 8 of the Kane patent invalid. The opinion reached this conclusion solely by a consideration of a minor difference between Kane and the

prior art. We have nothing more to say as to this difference which the court did consider.

The vital and essential difference, however, between Kane and the prior art is not referred to in the court's opinion, and we respectfully submit that the opinion indicates a lack of appreciation of this difference which constitutes the essence of the Kane invention.

By our petition for rehearing, we seek to place before the court the vital but unrecognized and unconsidered *facts* as to the distinction between Kane and the prior art, and then to *argue* that the difference does involve invention.

Respectfully,

L. A. W.

R. M. S.

Of Counsel for Plaintiff-Appellee.

Endorsed: Filed March 7, 1921. Edward M. Holloway,
Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS,
For the Seventh Circuit.

No. 2769.

Splitdorf Electrical Company,
Defendant-Appellant,

vs.

Webster Electric Company,
Plaintiff-Appellee.

NOTICE.

Edward Rector, Esq.,
Counsel for Appellant,
McCormick Building,
Chicago, Illinois.

Dear Sir:

We are delivering to you herewith a copy of a printed petition for rehearing and of a motion for oral argument on the petition, which we are filing to-day in the Clerk's Office.

L. A. W.

R. M. S.

Of Counsel for Plaintiff-Appellee.

Receipt of a copy of the above notice and of the petition for rehearing and motion referred to therein, at Chicago, Illinois, March 7th, 1921, is hereby acknowledged.

Of Counsel for Defendant-Appellant.

State of Illinois, }
County of Cook. } ss:

J. David Dickenson, being first duly sworn, says that he is a clerk in the employ of Williams, Bradbury, See & McCaleb, at Chicago, Illinois, of Counsel for Plaintiff-Appellee, in the suit of Splitdorf Electrical Company vs. Webster Electric Company No. 2769 in United States Circuit Court of Appeals for the Seventh Circuit; that on March 7th, 1921, he delivered copies of the annexed notice and of the printed petition for rehearing and motion for oral argument on the petition referred to in said notice to a member of the firm of Rector, Hibben, Davis & Macauley at their offices in the McCormick Building, Chicago, Illinois, Mr. Rector being of Counsel for Defendant-Appellant.

J. D. D.

Subscribed and sworn to before me at Chicago, Illinois, March 7th, 1921.

E. V. G.

Notary Public.

And afterwards, to wit: On the eighth day of March, 1921, in the October term last aforesaid there was filed in the office of the clerk of this court a certain notice which said notice is in the following words and figures, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS,
For the Seventh Circuit.

No. 2769.

Splitdorf Electrical Company,
Defendant-Appellant,
vs.
Webster Electric Company,
Plaintiff-Appellee.

NOTICE.

Edward Rector, Esq.,
Counsel for Appellant,
McCormick Building,
Chicago, Illinois.

Dear Sir:

We are delivering to you herewith a copy of a printed petition for rehearing and of a motion for oral argument on the petition, which we are filing to-day in the Clerk's Office.

LYNN A. WILLIAMS,
ROBERT M. SEE,
Of Counsel for Plaintiff-Appellee.

Receipt of a copy of the above notice and of the petition for rehearing and motion referred to therein, at Chicago, Illinois, March 7th, 1921, is hereby acknowledged.

Of Counsel for Defendant-Appellant.

State of Illinois, }
County of Cook. } ss:

J. David Dickinson, being first duly sworn, says that he is a clerk in the employ of Williams, Bradbury, See & McCaleb at Chicago, Illinois, of Counsel for Plaintiff-Appellee, in the suit of Splittorf Electrical Company vs. Webster Electric Company No. 2769 in United States Circuit Court of Appeals for the Seventh Circuit; that on March 7th, 1921, he delivered copies of the annexed notice and of the printed petition for rehearing and motion for oral argument on the petition referred to in said notice to a member of the firm of Rector, Hibben, Davis & Macauley at their offices in the McCormick Building, Chicago, Illinois, Mr. Rector being of Counsel for Defendant-Appellant.

J. DAVID DICKINSON.

Subscribed and sworn to before me at Chicago, Illinois
March 7th, 1921.

EDNA V. GUSTAFSON,
Notary Public.

(Seal)

(Endorsed) Filed March 8, 1921. Edward M. Holloway,
Clerk.

And afterwards on the same day, to wit, the seventh day of March, 1921, in the October term last aforesaid, there was filed in the office of the Clerk of this Court a certain petition for a rehearing, which said petition is in the following words and figures, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

No. 2769.

SPLITDORF ELECTRICAL COMPANY,

Defendant-Appellant,

vs.

WEBSTER ELECTRIC COMPANY,

Plaintiff-Appellee.

APPELLEE'S PETITION AND ARGUMENT FOR REHEARING.

LIVINGSTON GIFFORD,

LYNN A. WILLIAMS,

ROBERT M. ZEE,

JEROME N. FRANK,

Counsel for Plaintiff-Appellee.

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UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

No. 2769.

SPLITDORF ELECTRICAL COMPANY,

Defendant-Appellant,

vs.

WEBSTER ELECTRIC COMPANY,

Plaintiff-Appellee.

APPELLEE'S PETITION AND ARGUMENT FOR REHEARING.

I.

Petition and Statement.

Plaintiff-appellee, Webster Electric Company, respectfully petitions the court for a rehearing in the above entitled cause, on the single question of the validity of claims 7 and 8 of the Kane patent No. 1,280,105.

While in form this is a petition for a "rehearing," it is not such in fact. The court has decided the question of patentable invention adversely to Kane solely upon what it calls an "immaterial" difference between Kane and Weber. The essence of the Kane invention

and the vital difference between Kane and Weber is nowhere alluded to in the court's opinion. We do not ask any reconsideration of the "immaterial" difference to which the opinion is limited. We do desire the court's consideration of the vital difference as to which the opinion is silent.

The opinion of the court, filed February 5, 1921, concludes that claims 7 and 8 of the Kane patent are "invalid for want of patentable novelty." This conclusion followed from the court's finding that—

"Certainly with the teachings of Weber (Patent No. 820,535) before us, the *prima facie* presumption of invention in Kane's contribution is overcome."

We respectfully submit that this conclusion and finding are based on the misconception that Kane's "unitary structure" consisted *merely* of a magneto-supporting bracket *integrally* united with the spark plug, as distinguished from Weber's magneto-supporting bracket *rigidly secured* to the spark plug. This view (and the court's opinion) wholly ignores the very essence of the Kane invention—Kane united **ALL OF** the operating mechanism of the equipment, in a single unitary structure secured to the engine by one single part. There is no intimation of this "unitary structure" in the Weber patent.

Kane's "unitary structure" is just as vitally different from Weber as it is from plaintiff's old Milton equipment. The Milton equipment was found wholly impractical by the International Harvester Company in 1909; the owners of the Weber patent found the Weber structure unusable and therefore manufactured the "unitary structure" of Kane; while the Kane structure is used on eighty per cent. of all single cylinder gas engines manufactured in this country.

The misconception on which we respectfully submit

the court's conclusion is based, is due, no doubt, to the fact that the original argument involved the consideration of a large number of complex questions, so that counsel were unable fully and properly to present to the court the facts concerning the single question in issue on this petition,—the meaning and validity of Kane's claims 7 and 8.

In the opinion the court asks if it was "patentable novelty to provide the means whereby the generator was supported by an arm running from the spark plug." In reaching a negative answer, the court said:

"The fact that the Weber patent fails to disclose a mounting element integral with the igniter block is not sufficient to distinguish the citation when it appears that Weber's two elements are rigidly secured together. In other words, it is quite immaterial whether the mounting of the generator upon the block is by a single piece which is integral with the block, or by two pieces securely fastened together."

On this petition we do not question that proposition. Our contention is that that proposition (to which the Court's opinion respecting the validity of Kane claims 7 and 8 is limited) is relatively immaterial.

Immediately following the above quotation, the court said:

"The essence of the (Kane) contribution was the *unitary structure* made possible by the rigidly and inseparably connected parts, the magneto generator, and the unitary block."

That is not in any sense the essence of the Kane invention! The union of the magneto and the spark plug (whether integrally as in Kane or rigidly as in Weber) is not the meaning of the term "unitary structure" as used throughout the record. Claim 8 of the Kane patent does not even purport to express a distinction between an integral, or one-piece supporting member, and

a non-integral or two-part supporting member, and claims 7 and 8 both rely for their patentable novelty upon a broad and important distinction which has nothing to do with the question whether a supporting element such as shown by Weber be of "integral" or of two-part construction.

The vital difference between Kane's "unitary structure" on the one hand, and the Weber patent and the old Milton equipment which Kane superseded on the other hand, is not referred to in the court's opinion. It is that vital difference which has caused the remarkable success of the Kane structure and the plaintiff company.

This petition, therefore, accepts the correctness of the court's opinion so far as it goes, but is directed wholly to a consideration of this vital difference between Kane and the prior art, to which the court's opinion makes no reference.

II.

Argument.

In the following argument, we shall endeavor—

First, to explain to the court the really vital difference, which its opinion does not consider, between Kane and Weber in construction, mode of operation and result, and,

Second, to call the attention of the court to what seems to us compelling evidence that this vital difference involved invention.

The Real and Important Distinction Between Kane and Weber.

Your Honors have apparently reached your expressed conclusion relative to claims 7 and 8 of the Kane patent upon the assumption that these claims would describe the Weber equipment if in Weber the horizontal generator supporting bracket 53 were made integral, and of a single piece, with the igniter block 3.*

The fact of the matter is that Weber would not meet either of these claims even if the generator bracket 53 were made integral with the igniter block 3. On the other hand, claim 8 of the Kane patent was purposely so drawn and worded that it would cover Kane's real invention even if the supporting member were made of two or more separate parts rigidly or otherwise secured together, as in Weber.

The court's opinion, in quoting claims 7 and 8, italicizes the following phrase in claim 8:

"A supporting member upon the several parts of which all of the aforesaid mechanism is mounted, and having a single integral part adapted to be attached to the engine,"

and said that these "words mark the asserted novelty upon which invention is predicated."

But this phrase does not even pretend to require that the supporting member shall be of a single piece of metal, or that it shall, in other words, be "integral." On the contrary, this phrase refers to the supporting member as having "*several* parts." These "*several* parts" may, within the very terms of the claim, be integral, or they may be entirely separate. One part may, for example, be of cast iron, and another part of steel, precisely as in Weber insofar as this feature alone is concerned.

* Weber's patent drawings reproduced on page 12 hereof.

The important thing is that "**ALL OF** the aforesaid mechanism" shall be mounted upon the single supporting member, regardless whether this supporting member be formed integrally or of several parts secured together, and that the supporting member, whether it be made of one piece or more than one piece, shall have but "*a single integral part adapted to be attached to the engine.*"

The essence of claim 8 is not at all, therefore, that the supporting member shall be of integral or one-piece formation, but that **ALL OF** certain "aforesaid mechanism" shall be mounted upon the one supporting member, and that this supporting member be attachable to the engine at a single place, and by a single part.

This Weber patent 820,535 was in the record, and before the Patent Office Examiner when this claim 8 was presented and allowed, and in the same paper in which the claim was presented the real and vital distinction between Kane and Weber was discussed in part as follows:

"At the oral interview above referred to we demonstrated to the Examiner the advantage of the Kane structure over that of the Weber patent No. 820,535 of the prior art, and we believe that the claims now presented distinguish clearly from the disclosure of the Weber patent and from all else in the prior art which had been cited or which has come to our attention. The claims now presented require that **ALL OF** the mechanism comprising the combination of elements stated in the claims shall be mounted upon the supporting member whereby the relative adjustments and synchronism may be maintained or insured no matter how often the ignition mechanism may be removed from and replaced upon the engine with which it is associated. In the Weber device there are *two supporting members adapted to be attached to different parts of the engine.* Upon one of these members the electrodes are mounted. Upon the other member the spring mechanism and push rod engaging mechanism are mounted. Weber's generator is in turn mounted upon still a third part

of the supporting arrangement, and this separate generator supporting shelf is in turn clipped under two of the bolt heads which hold the flange of the igniter plug to the engine cylinder. In Weber, therefore, it is impossible to remove the entire ignition equipment as a unit or without disassembling it, and any slight failure to return all of the supporting parts to their identically same positions and same relative positions is bound to alter the interadjustment and relationships between the essential functional parts of the ignition equipment, with consequent liability to destroy the necessary synchronism, let alone the inconvenience and labor involved in attempting to remove and replace the ignition equipment.

“The claims now presented are not descriptive of the Weber device. They do describe the features of Kane’s structure wherein Kane’s very important practical advantages over Weber inhere.” (Italics ours.)

We shall, in the following pages, explain in a little more detail this distinction between Kane and Weber which was thus presented to the Patent Office Examiner at the time when claims 7 and 8 were allowed.

The Milton Device Which Kane Superseded.

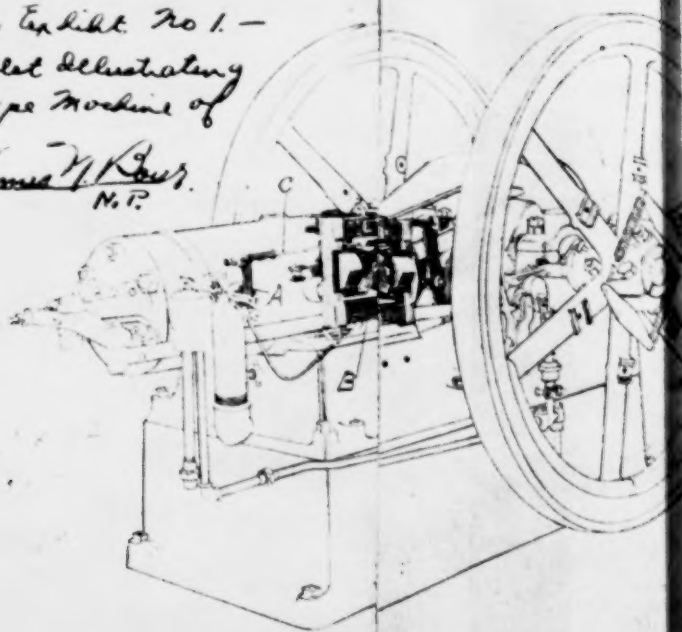
On page 9 we have reproduced from Plaintiff's Exhibit 13 (Exhibit Book, page 11) a cut of the Milton magneto as manufactured by the Webster Electric Company and sold by it to the International Harvester Company prior to Kane's invention of the unitary magneto ignition equipment of the patent in suit. This cut shows the igniter block with its fixed and movable electrodes mounted upon the engine cylinder at A. The generator B with its driving spring mechanism, is mounted upon a separate and distinct boss upon the side of the engine cylinder, while a connecting rod or link C communicates motion from the rotor of the generator B which is mounted at one place, to the movable electrode of the spark plug A, which is independently mounted at another place.

The spark plug A may be removed from the engine cylinder without removing the generator B and its associated mechanism. So also the generator and its driving spring mechanism may be detached without removing the igniter block A with its associated electrodes. Although both parts of the ignition mechanism may be removed from the engine, the very fact of removal destroys their co-operative relationship and makes it impossible to operate the equipment either in the manner in which it operates when the two parts are separately mounted upon the engine cylinder or in any other such manner as will cause the production of an ignition spark.

United States Patent Office
 In re Interference No. 39,913
 Milton versus Kane

Kane Exhibit No. 1. -
 Pamphlet Illustrating
 Link Type Machine of
 1909 -

James H. Kane.
 N. P.



6-horse power I. H. C. engine equipped with magneto

Milton Two-Group Construction of Prior Art.

The Weber Construction.

On page 12 we have reproduced the drawings of Weber patent 820,535. Your Honors have held that it is quite immaterial whether the mounting of the generator upon the igniter block 3 be by means of a bracket which is integral with that block or by the separate bracket 53 having an upturned flange 54, secured to the igniter block 3 by bolts or otherwise.

But your Honor's opinion is wholly silent as to the vital distinction between Weber and Kane which resides in the fact that the driving spring means 39, 50, etc., of Weber, is independently mounted upon "a horizontal bracket 31 to the right of the igniter block 39 as viewed in Fig. 1" (lines 34 to 38, page 2), this second supporting member 31 being secured to the side of the engine cylinder at a place quite distinct and wholly removed from the igniter block 3.

Claims 7 and 8 of the Kane patent specify that "**ALL OF** the aforesaid parts" shall be mounted upon a single supporting member. One of the essential and vital parts of the "aforesaid" mechanism in both claims is the "spring means tending normally to hold said rotor in a certain position." In Weber, the spring means 39, 50, etc., is not mounted upon the igniter block 3 or the generator bracket 53, 54; it is mounted upon the wholly separate and remote bracket 31.

In Weber, therefore, the generator and igniter block and electrode mechanism may be removed from the engine without removing the driving spring means 39, 50, etc.; on the other hand, the driving spring means 39, 49, 50, 31, etc., may be removed from the engine without removing the generator or igniter block 3. It is impossible with Weber, however, to remove **ALL OF** these essential

parts as a unit or without destroying their mechanical and electrical relationships. In Weber, as in the Milton magneto of the prior art, it is impossible upon removing either one or both groups of mechanism to cause them to co-operate or function as they do when attached to the engine and driven by the engine.

Weber and Milton Were Alike; Both Were Two-Group Constructions.

In the old Milton magneto (which on March 15th, 1909, was condemned by its sole purchaser, the International Harvester Company), the driving springs were permanently attached to the generator, but the generator with its driving springs was attached to the engine at one place while the igniter block was attached to the engine at a wholly different place. In Weber, the generator was secured to the igniter block and the igniter block was attached to the engine at one place, while the driving spring means was attached to the engine at a wholly different place. In Milton the generator was connected with the movable electrode arm by an intervening connecting rod or link C, as shown in the cut on page 9 (or 14 of Milton patent 1,053,107, Exhibit Book, page 848), while in Weber the driving spring means was connected with the generator by an intervening connecting rod or link 39.

Weber and Milton were alike therefore in that both required attachment to the engine at two separate and distinct places. In both of them, part of the equipment was associated with the igniter block and attached to the engine with the igniter block, while other parts of the equipment were mounted upon a second and independent bracket which was attached to a distant part of the engine.

In both Milton and Weber, any attempt to remove the

ignition equipment from the engine involved its disassembly—it involved a destruction of the co-operative relationship between its essential parts.

In neither Milton nor Weber was it possible to test or adjust or determine the functioning of the parts or of the whole when removed from the engine.

Milton and Weber were alike also in that both were mechanical and commercial failures.

Not only were Milton and Weber alike in being mechanical and commercial failures; the reason for their failure was essentially the same. In both Milton and Weber the necessarily co-operating mechanism of the ignition equipment was divided into two separate and distinct groups, these two groups being separately and independently mounted upon the engine cylinder in such manner that their functional relationship depended upon their attachment to the engine and in such manner also that the removal of either one or both groups of mechanism from the engine made it impossible to operate the whole or to insure its return to the engine with the necessary or any predetermined relationship between the parts.

The Essence of Kane's Invention.

The Kane invention, as specified in claims 7 and 8, and as originally produced by Kane, is shown in the cut on page 17, this cut having been reproduced from Plaintiff's Exhibit 16 (Exhibit Book, page 19). This shows clearly the igniter block A, in which the electrodes are mounted, and which is extended to form a single mounting means for **ALL OF** the "aforesaid" mechanism, including the generator B and the driving springs C, C, as enumerated in claims 7 and 8. When the bolts are removed from the holes *a, a*, the entire magneto ignition equipment may be detached from the engine as a unit. It is as completely operable when removed from the engine as when attached to the engine. Whatever may be the character and timing of the ignition spark when removed from the engine, precisely that character and timing are insured when the ignition unit is replaced upon the engine. As claim 8 explains, the construction is one "whereby all of said mechanism may be removed from the engine with unchanged relations between any and *all* of the parts of **ALL OF** said mechanism, thereby insuring the predetermined synchronism and inter-related adjustment of said mechanism when it is replaced upon the engine."

The importance of this one-group construction is due to the fact that the proper ignition of the explosive mixture in an internal combustion engine is absolutely essential to its operation, and that the ignition of the explosive charge is prevented whenever the spark electrodes become foul. There is an unpreventable deposit of carbon upon these electrodes and the block in which they are mounted. As explained by the experts, it is necessary not merely occasionally, but frequently, to clean the carbon deposit from the electrodes and exposed end

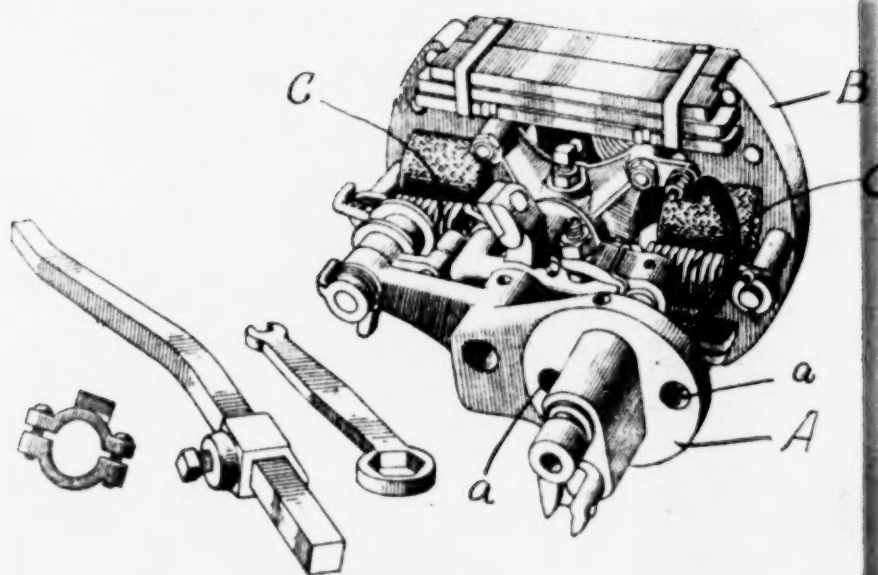


Illustration No. 6

Kane's Unitary Construction.

ALL OF the mechanism is mounted upon a single supporting member having a single attaching part A.

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of the igniter block. To do this, it is necessary to remove the igniter block with its electrodes from the engine cylinder.

With Kane's unitary or one-group equipment, the inexperienced operator of an engine can and does remove the entire equipment whenever the spark electrodes require cleaning. The carbon may be scraped or brushed from the electrodes and the igniter block in which they are mounted, and the entire ignition mechanism may be returned to its position upon the engine without changing or destroying for one instant the mechanical relationships between all of the parts, the accuracy of whose adjustment is essential to the operation of the ignition device.

In order to determine whether the cleaning of the electrodes has removed any particle of carbon which may have effected a fatal short circuit, the operator has merely to cock and release the rotor of the generator in order to observe whether the requisite "fat" spark is produced between the electrodes. If the spark is of the proper character, the magnetic equipment is replaced upon the engine with the certainty that it will produce identically the same spark when actuated by the push rod of the engine as when cocked and released in the hands of the operator.

If after cleaning the electrodes, the hand operation of the mechanism does not effect the production of a fat, hot spark between the electrodes, then the inexperienced user of the engine may change his adjustments one way and the other until the hottest, fattest possible spark is produced. By cocking and releasing the rotor of the generator, while holding the unitary and completely assembled equipment in his hands, he can see and determine by his eye alone when the best

adjustment is secured. If, on the contrary, the ignition equipment could be made to function only when assembled upon the engine, then it would be impossible to observe the character of the spark, because the electrodes in that case would be concealed within the cylinder of the engine. Under such circumstances, the character of the ignition spark could be determined only by the use of elaborate electrical measuring instruments, with which, of course, the ordinary user is not supplied; or by cranking the engine in an effort to make it run, followed by repeated removals and adjustments of the equipment. Long continued cranking of the engine which refuses to start, in order to test such repeated readjustments, is a task of exasperating difficulty. The fact that eighty per cent. of the single-cylinder stationary engines now manufactured and sold are equipped with the Kane unitary or one-group magneto ignition equipment is the best possible evidence that engine users appreciate the very great advantages of the construction described in claims 7 and 8 of the Kane patent.

The History of the Weber Patent in the Hands of Its Owners.

No amount of argument, no quantity of expert opinion, could establish the deficiencies of the Weber equipment so effectively as does the history of the Weber patent in the hands of its owners.

It is not shown that a single equipment like that of the Weber patent was ever manufactured or used by Weber or the concern with which he was associated. If ever it had been used by them, the defendant would have produced the proof to show the fact.

The defendant's proof is that Henry G. Cox went

with the Accurate Engineering Company of Chicago in 1914 to develop its business in magnetic ignition equipment (Record, pp. 719 and 716),—a line of business in which the Accurate Company had not theretofore been engaged.

“The Weber patent (No. 820,535) was bought in the summer of 1915 (by the Accurate Engineering Company) and then the machine shown on page 2 of the Plaintiff’s Exhibit No. 70 was made, and some time later than that the machine shown on the inserted page 2 of Plaintiff’s Exhibit 71 was made, and that machine was intended to take the place of that shown on page 2 of Plaintiff’s Exhibit 70” (Record, p. 719).

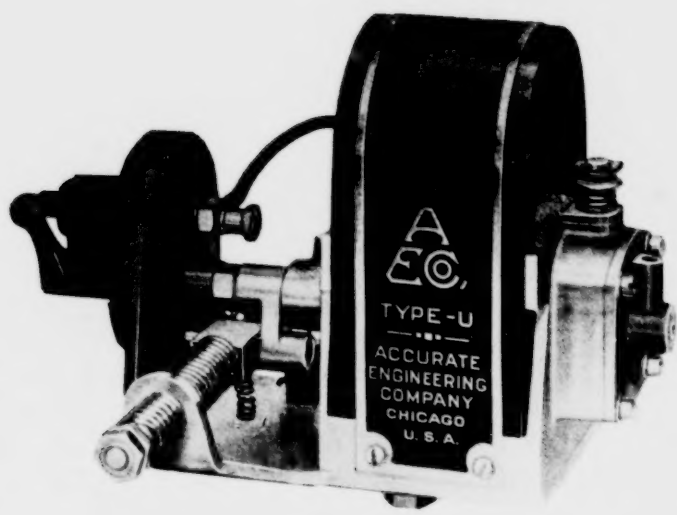
The photographs on pages 23 and 25 are reproduced from cuts (Plaintiff’s Exhibits 70 and 71) of the Accurate Engineering Company’s equipment as thus developed immediately after the company had bought the Weber patent.

In these machines thus manufactured by the Accurate Company, and ostensibly under the Weber patent, “the entire equipment” as testified to by Mr. Cox on cross-examination, “including magneto and operating springs, was mounted and carried as a part of the plug member” (Record, p. 719). The first of the photographs on page 23 shows clearly that the second and independent horizontal bracket 31 of the Weber patent has been entirely dispensed with, and that the main driving spring, while retaining merely the general form of that shown in the Weber patent, has been transferred to a position in association with the generator and with which it is mounted upon the single bracket member extending from the igniter block.

The Accurate Engineering Company was not hampered by any previous history in adopting any design that it might see fit. But after some experimentation, the very

first oscillating magneto equipment which it offered for sale (Record, page 717) did not conform at all with the non-unitary or two-group plan of the Weber patent. On the contrary the very first machine ever offered for sale by the owners of the Weber patent was the machine shown on page 23 and embodying the unitary or one-group idea which is the vital and distinguishing feature of the Kane invention. The result was that the first machine brought out by the Accurate Company "under the Weber patent" was one which could be removed from the engine as a unit and which, when removed, was completely operable in precisely the same manner as when attached to and driven by the engine. Like the Kane machine of the plaintiff with which the Accurate Company must compete upon entering the magneto-ignition field, its first equipment was one in which the spark electrodes could be removed from the engine cylinder for cleaning without destroying or disturbing, in the slightest degree, the inter-related parts involved in producing the spark and in which the entire equipment could be replaced upon the engine with the certainty that every element entering into the production of the ignition spark would function when on the engine in precisely the manner in which it functioned while in the hands of its owner.

So also in the later form of the Accurate Engineering Company's "unitary construction," as shown in the second of the two photographs (page 25) the spring driving means was mounted upon and carried by the generator bracket so that the machine was "of a unitary construction" adapted to be operated in precisely the same manner whether on the engine or removed from the engine. In this case, even the general form of the Weber driving spring means was abandoned and the dual driving spring arrangement of Kane was adopted. In this second equipment thus gotten out by the owners of the



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Weber patent, the second and independent bracket 31 was entirely dispensed with and **ALL OF** the co-operating mechanism of the entire ignition device was mounted upon the several parts of a single supporting member having but a single integral part, *i. e.*, the igniter block at the extreme right-hand end of the photograph, adapted to be attached to the engine. The construction was one whereby, to use the language of claim 8, "**ALL OF** said mechanism may be removed from the engine by removing said single integral part and may be returned to its position upon the engine with unchanged relations between any and all of the parts of all of said mechanism, thereby insuring the predetermined synchronism and inter-related adjustment of said mechanism when it is replaced upon the engine."

It is clear that the Accurate Company was intent upon following the Weber patent insofar as it was possible to do because, as Mr. Cox explains, the company was at great pains to make the plug and shelf member in two parts, rather than integrally. Thus Mr. Cox says (Record, page 717):

"The construction shown on page 2 of the catalog, Exhibit No. 70, is one in which there is a plug which extends into the engine cylinder; the plug has a flange; then there is a shelf member having a horizontal part, on which the magneto is mounted, and a vertical flange which runs up along side the flange of the plug; then there are bolts or studs, two of them, at diametrically opposite sides of the plug member and extending through the flange of the plug and the vertical flange of the shelf member; and those bolts when tightened up, would hold the vertical flange of the shelf to the plug and thus hold the parts together, while they were in operation on the engine.

"The part of it going into the engine was of cast

iron, and the shelf was of steel, and the two were riveted together."

All of this had to do, however, with the igniter block and generator bracket as to which your Honors have said that—

"It is quite immaterial whether the mounting of the generator upon the block is by a single piece which is integral with the block, or by two pieces securely fastened together."

But in the material and important matter, *i. e.*, whether "**ALL OF** the aforesaid mechanism is mounted" upon a single supporting member "having a single integral part adapted to be attached to the engine," The Accurate Engineering Company, having bought the Weber patent, found it a mechanical and commercial necessity to abandon Weber and adopt Kane.

At the time he testified, Mr. Cox "was the magneto superintendent for the International Harvester Company" (Rec., p. 713). He testified that the "Harvester Company took over the magneto ignition business of the Accurate Engineering Company and acquired the Weber patent" in April, 1917 (Rec., p. 719). The International Harvester Company was apparently unwilling to infringe the Kane patent, and therefore never manufactured either of the unitary magneto ignition equipments manufactured previously by the Accurate Company, and this notwithstanding the fact that it took over the Accurate Company's designs, tools, dies and equipment for manufacturing these machines. Nor did the Harvester Company manufacture any other form of ignition equipment embodying the Kane idea. On the contrary, as shown by the testimony of A. C. Kleckner (Rec., p. 792), the International Harvester Company, after its acquisition of the Accurate Company, continued to purchase thousands of the Kane unitary equipments annually

from the plaintiff, Webster Electric Company. The Harvester Company, like the previous owners of the Weber patent, is not shown ever to have made or used a single equipment constructed on the two-group plan of Weber.

The Compelling Evidence That Kane's Combination Did Involve Invention.

The courts have inevitably recognized the difficulty long after the event of answering the question whether a novel combination involves invention over the apparently almost completed attempts of the prior art. It is because of this difficulty that there are almost innumerable authorities for deciding such questions if possible upon the history of the invention in its relation to the art. We cannot recall any improvement patent whose history is more sharply indicative that invention rather than the mere skill of the art was involved in its creation.

The Long-Felt Want.

First, there is the agreement of the witnesses for the defendant with the witnesses for the plaintiff that there was prior to the Kane invention a long-felt and unsatisfied demand for something which would solve the problem of electric ignition for stationary internal combustion engines.

T. K. Webster, testifying on behalf of the plaintiff, said:

“Well, the whole magneto business was in a flux at that time (prior to 1909); they were using batteries, and yet they wanted magnetos; and it was a progressing upwards; everybody was trying to build something better, and we kept at it, and the only reason why we got the business of the Harvester for a time was it (the old Milton magneto) was probably the best machine on the market at the time.” (Rec., p. 342.)

Milton, testifying on behalf of the defendants, says:

"At that time (prior to 1909), I do not recall of anybody using magnetos of this type (rotary or oscillating alternating current magneto generators as distinguished from small direct current dynamos) on any stationary engines in this country. . . .

"Q. Were batteries used at that time quite generally?

"A. Almost universally. . . . They were a source of a great deal of trouble. . . . We found all the engine manufacturers very much interested in getting an electrical, an electric generator or magneto that would do away with battery troubles. So the developing progressed." (Record, p. 510.)

The First Engine Manufacturer to Adopt the Kane Equipment Had Previously Tried to Solve the Problem Itself.

The International Harvester Company, which had been practically the sole customer of the Webster Electric Company for its old Milton magneto of the two-group type had prior to the advent of the Kane invention become so thoroughly dissatisfied with the Milton device that the superintendent of its engine plant had called upon his engineers to attack and if possible solve the problem of satisfactory magneto ignition for their engines. This superintendent, Mr. H. A. Waterman, testified:

"Witness had never seen an equipment like plaintiff's Exhibit No. 12 (the Kane unitary equipment) until it was brought to Milwaukee by the Kanes, nor heard any discussion of that form of equipment with the integral plug and bracket support prior to that time. Witness said: 'No. I remember that well, because I had my boys get together and we discussed the possibility of making something satis-

factory if the Webster people couldn't furnish it, and when this (the Kane equipment) was presented, I said this would be satisfactory and we wouldn't attempt any further work of that kind.' " (Record, p. 235.)

The Webster Company's Long-Continued and Desperate Efforts to Solve the Problem Prior to Kane's Invention.

The Webster Electric Company or its predecessors under the same leadership of T. K. Webster, the president of the plaintiff company, embarked in an effort to solve the problem of magneto ignition for stationary internal combustion engines in 1905. It met with every conceivable discouragement, and loss, in its continued attempts to make something of the inventions of Curtin, McInnerney and Milton, with the net result that in March, 1909, it was selling a few magnetos to but a single customer, the International Harvester Company, and that company on March 15, 1909, had, by the superintendent of its engine plant, condemned the Webster Company's sole product as worthless and unusable. In other words, four years of time and effort and expenditure of money stood as a total loss to the Webster Company just prior to Kane's invention on April 11, 1909. And this was not because the Webster Company's magneto was inferior to the magnetos of other manufacturers. It was because no one had satisfactorily solved the problem of magneto ignition for stationary engines. No other manufacturer was to any noticeable extent making or selling magnetos for that service. The Webster Company's magneto, faulty and condemned as it was, was the best that the market afforded. (Webster Rec., p. 342.)

The whole record is full of the story of the struggle of the Webster Company and the Harvester Company

previous testimony had changed his opinion, that of all of the single-cylinder stationary internal combustion engines now manufactured and sold in this country, approximately eighty per cent. are equipped with the unitary magneto igniter equipment, such as is involved in this suit." (Rec., p. 792.)

There is not one word of evidence that the constructions of Weber or Wattles or Hennig have ever gone into commercial use in a single instance, either in the exact form shown in these prior patents or in any form embodying their substance. The evidence is that Wattles experimented for months in an effort to make a sale to the Harvester Company, but without success. (Rec., p. 293.) The evidence is that when the owners of the Weber patent went into the magneto business, they abandoned Weber's two-group arrangement and copied the unitary construction of Kane. (Rec., pp. 715-719.) The Hennig scheme apparently died with the birth of his patent.

The Defendant's Predecessors, Sumter Electrical Company, Having Attempted to Sell a Non-Unitary Oscillating Magneto Equipment Prior to Kane's Invention in 1909, Was Forced by Kane's Success First to Abandon and Denounce All Oscillating Magneto Equipment, Including Particularly Kane, and Then to Copy and Adopt the Kane Idea.

In about 1907, the Sumter Electrical Company at Charlestown, South Carolina, commenced to manufacture magnetos and as shown by the successive catalogues of this company in evidence, it was in 1910 and 1911 manufacturing and advertising an oscillating magneto of the "two-group" type not unlike the old Milton magneto of the Webster Electric Company. This two-group

magneto of the Sumter Company was found not to be salable in competition with Kane's unitary or one-group magneto, which had been put on the market by the Webster Company.

The inability of the Sumter Company to sell their two-group oscillating magneto in competition with the Webster Electric Company's unitary machine had become so pronounced that in the 1913 issue of their catalogue, the Sumter Company said (Rec., p. 406):

"We furnish a full line of this type (oscillating magnetos) formerly so popular, but wish to state that owing to the high efficiency of our standard rotary type and the fact that we can meet every requirement with the rotary machine, oscillators are not so desirable, as they have certain inherent disadvantages not possessed by rotary machines.

"We will be pleased to correspond with manufacturers now using oscillators who desire to change to the more simple and efficient rotary type. . . . We do not recommend oscillators, and while we furnish a machine of this type equal, if not superior, to anything on the market, we do not recommend same."

This advertising condemnation of the oscillating magneto was continued by the Sumter Company into 1914, as evidenced by Plaintiff's Exhibit No. 28, Sumter Booklet, issued in February 1914 (Rec., p. 407). During 1914 and 1915 the success of the Webster Company's Kane machine had become assured. The Webster Company's sales had jumped to 46,444 machines in a single year.

The Sumter Company was forced by this success of the Webster Company to drop its disparagement of oscillating magnetos and in 1915 commenced the manufacture of a unitary or one-group equipment substantially in duplication of the Kane equipment as manufactured by the Webster Company beginning in 1909. The Sumter Company's entire policy was changed, and its adver-

tising matter lauded and vigorously pushed the one-group oscillating machine which it had copied from the plaintiff (Rec., pp. 418, 410; Plaintiff's Exhibits 40 and 41).

The Sumter Company was at that time controlled by the Splitdorf Company and the two were consolidated in 1915 (Rec., pp. 486, 487, 491, 492). It is the machines thus brought out by the Sumter Company in 1915 and subsequently manufactured and sold with some variations in detail by the Splitdorf Company which infringe and are conceded to infringe claims 7 and 8 of the Kane patent in suit.

We have, then, a situation in which the effect of the Kane invention upon the defendant's business was first to drive off the market the old two-group oscillating magneto of the defendant, then to incite the defendant to disparage and denounce all oscillating magnetos, including particularly the Webster Company's Kane machine, and finally to exploit an oscillating magneto which incorporated the unitary one-group principle—the vital essence of the Kane invention.

The Webster Company's Sales of Kane's Unitary Magneto Ignition Equipment.

We have shown that the Webster Company's ability to sell any of the old Milton two-group magnetos had ended on March 15, 1909.

Its first order for a unitary magneto embodying the Kane invention immediately followed Mr. Waterman's letter of June 11, 1909 (Exhibit Book, page 4). Mr. Loeb, the secretary of the Webster Company, testified that by 1912 the sales of the Kane machine were at the rate of about 9,000 per year. By 1915 the sales had jumped to more than 46,000. In the succeeding year the sales practically doubled. In 1917, 106,773 of these machines were

sold; and in 1918 the sales of this one-group unitary machine were 129,785 (Rec., p. 474). In 1919 the evidence shows that eighty per cent. of all of the single-cylinder stationary engines manufactured in this country were being equipped with magneto igniters embodying the Kane idea of mounting **ALL OF** the inter-related and co-operating mechanism as a group upon a single supporting member attachable to the engine at one place, and one place only (Rec., p. 793).

Conclusion.

We have referred to the record and stated our views at greater length than is usual in petitions for rehearing. But the situation itself is unusual. We are not asking the court to reconsider any question which it has decided. We do ask it to consider and decide the vital question in the case, to which its opinion makes no allusion whatever.

The original submission of the case to this court involved the argument and consideration of complicated questions of interpretation of contracts,—of priority of invention between Kane and Milton,—of the Kane-Milton and the Kane-Podlesak interferences,—of infringement,—and of invention in the Kane structure as compared with the prior art. Although our original brief contained 145 pages and our reply brief 39 pages, we were able to devote only 8 pages in our main brief and 2 pages in our reply brief to the consideration of Kane's invention as compared with the prior art, without extending those briefs beyond all reasonable limits. A similar situation prevailed at the oral argument.

As a consequence of the necessarily incomplete and unsatisfactory presentation of the facts and argument as to the essence of Kane's invention and its vital dif-

ferences from the prior art, the court has based its decision of this question of invention on a relatively unimportant difference between Kane and the prior art, without making any allusion to the vital difference between Kane and the prior art, and apparently without an appreciation of what the Kane invention really is.

The considerable length of this petition is accounted for by our desire to show to the court quite fully at this time that there is much proof in the record of a vital and inventive difference between Kane's "unitary structure" and everything that preceded it, and that the court's opinion has stopped short of a consideration of this proof and of an appreciation of the essence of the Kane invention. There is, however, much more proof to be examined and argument to be presented, than can be submitted within the limits even of this extended petition. We respectfully submit that further argument of the case should be permitted in order that this essential question of invention in the Kane structure, as to which the court's opinion is silent, may be considered and decided.

Respectfully,

LIVINGSTON GIFFORD,

LYNN A. WILLIAMS,

ROBERT M. SEE,

JEROME N. FRANK,

Counsel for Plaintiff-Appellee.

Certificate of Counsel.

We hereby certify that in our judgment the foregoing petition for rehearing is well founded, and has not been filed for delay.

Chicago, March 7, 1921.

And afterwards, to wit: On the twenty-fifth day of March, 1921, in the October term last aforesaid, there was filed in the office of the Clerk of this Court a certain answer to plaintiff-appellee's petition for a rehearing, which is in the following words and figures, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

October Term, A. D. 1920.

No. 2769.

Splitdorf Electrical Company,	}
<i>Defendant-Appellant,</i>	
<i>vs.</i>	
Webster Electric Company,	
<i>Plaintiff-Appellee.</i>	}

ANSWER TO PLAINTIFF-APPELLEE'S PETITION
FOR REHEARING.

A careful reconsideration of the opinion of the court, in connection with the petition for a rehearing and the brief in support of the same, has not led to the discovery that the court made any mistake of fact or conclusion in respect to the subject matter of the petition for rehearing. On the contrary, the opinion shows, we think, that the court had a perfectly clear apprehension of the subject matter of claims 7 and 8 of the Kane patent in suit, and of the relation of the disclosures of the prior art to that subject matter, and reached a correct conclusion respecting them.

The burden of plaintiff's entire argument seems to be that the court overlooked or did not give sufficient weight to the fact that claims 7 and 8 specify that "all of" the previously enumerated elements of each of the claims, one of which elements is the spring for actuating the armature (*i. e.*, for returning it to initial position after being displaced therefrom and released) are mounted upon a single supporting member carried by the igniter plug, whereas in the construction disclosed in the Weber patent of the prior art the

spring is mounted upon and carried by an independent support.

That the court did not overlook this difference between Kane and Weber is sufficiently evidenced, we think, by the fact that it is perfectly plain and apparent upon the face of the drawings of the Weber patent, as well as being clearly described in the specification, and by the fact that the difference was repeatedly referred to and discussed in defendant-appellant's brief. Thus, the very first reference to the Weber patent in that brief (page 73) was as follows:

"Weber Patent No. 820,535. This patent discloses an oscillating magneto of the same general character as that of the Kane patent in suit, and designed for the same use and in the same way as the Kane construction; and all of the parts which are, in the Kane construction, mounted upon and carried by the igniter plug, are likewise mounted upon and carried by the igniter plug in the Weber construction, with the single exception of the spring which operates to return the oscillating armature to normal position after it has been displaced therefrom and released."

Again, on page 78, the difference between Kane and Weber in this respect was referred to as follows:

"The two criticisms of the Weber disclosure offered by plaintiff's counsel and expert in their effort to distinguish it from that of the Kane patent, are, first, that it is not clear, from the specification and drawings of the Weber patent, how the vertical flange 54 of the horizontal shelf or bracket 53 is 'secured rigidly to the igniter block 3,' and, second, that the spring 50 for returning the armature to initial position after it has been moved therefrom and released by the plunger rod 35 is not mounted upon and carried by the shelf or bracket which carries the magneto generator, as is the case in the Kane construction."

The subject is again referred to and discussed on pages 82, 83 and 84, so that there can be no question, we think, that the true facts were clearly before the court at the time it reached its conclusion and prepared its opinion.

Moreover, as shown by the record and pointed out in our former brief, the fact that the spring is in one case mounted directly upon the support which carries the magneto, and in the other upon an independent support, has nothing whatever to do with the "preservation of synchronism" between

the co-operating parts, which, according to the argument of plaintiff's counsel, constituted the primary object and advantage of Kane's alleged invention.

There are two things to synchronize. The first and important one is to separate the electrodes just at the right point in the return movement of the armature, so that the spark will be produced when the current generated by the movement of the armature reaches the maximum. The second and less important is to produce the spark at the right point in the stroke of the piston in the engine. This is determined by the time when the armature is tripped, so that the springs may return the same to normal position.

With respect to the first of these, the Weber construction makes exactly the same provision for "preserving synchronism" that the Kane construction does, not only clearly disclosing it in the drawings of the patent, but specifically referring to it in the portion of the specification which the court quotes on page 8 of its opinion and which reads as follows:

"In order that the crank arm and the hammer arm may hold their relative positions with respect to each other intact, I prefer to mount the plate or board upon a horizontal bracket, the inner end of which is provided with a vertical flange secured rigidly to the igniter-block."

This subject is discussed at length at pages 78-81 of our former brief, and the opinion of the court clearly shows that there was no misapprehension whatever respecting it. (See also Rec., 695, 696.)

With respect to the second of the two provisions for "preserving synchronism," there is similar provision (or lack of it) in both Kane and Weber. That is to say, there is no more or better provision in Kane for preserving a definite and fixed relation between the parts which operate to turn the armature of the magneto from normal position, against the resistance of its spring, and then trip and release it, than there is in Weber. In each of them the tripping device is a part of the engine and remains permanently connected to and mounted upon the engine when the igniter plug and magneto are removed. Thus, in Kane the armature is retracted or turned from its normal position, against the resistance of its springs, by means of the push rod 36 whose left-hand free end engages the trip arm 35 secured to and projecting from the armature shaft 16, and whose opposite end (not

shown in the drawings of the Kane patent) is permanently connected with the engine and operated by a cam or eccentric thereof, as shown in Fig. 1 of the drawings of Kane's Patent No. 1,204,573 (Rec., 914) which issued upon the original application which formed the basis of the divisional application upon which the Kane patent in suit issued.

When the igniter plug and magneto are removed from the engine in the Kane construction this push rod remains upon the engine, and the relation between its operating free end and the trip arm 35 of the magneto is of course temporarily destroyed. If the magneto is replaced upon the engine in exactly the same position which it previously occupied the relation between these parts for tripping the armature will be restored, but if there is the slightest difference in the replaced position of the magneto from that which it occupied before the relation of such parts will be modified.

The push rod 36 carries an adjustable cam piece 62 which rests upon and rides upon a roller 38, by adjusting which lengthwise of the push rod the exact point of release of the armature can be adjusted and varied as may be necessary.

Substantially the same provisions for retracting the armature and tripping and releasing it are found in the Weber patent; that is to say, the rod 39 whose left-hand end is connected to the arm 40 projecting from the armature shaft has its right-hand end screwed into and secured to a sliding block 33 mounted in a guideway upon a supporting plat or shelf carried by the bracket 31 bolted to the cylinder wall of the engine. This sliding block 33 is provided upon its upper face, near its right-hand end, with a lug 34 which presents a shoulder engaged by the free end of the push rod 35 whose opposite end is connected with the crank 37 upon the engine shaft. When the push rod 35 is reciprocated to the left, carrying the sliding block 33 with it and turning the armature from normal position against the resistance of its spring, (as shown in Fig. 9 of the Weber patent,) the widened free end of the push rod rides up over an inclined or cam surface 42 upon an adjustable block secured in relatively fixed position beside the slide 33, and at the proper point is thereby disengaged from the shoulder of the lug 34 and releases the parts, whereupon the spring restores them to normal position and forces the hammer arm 41 (Fig. 7) to strike the end of the adjustable screw 47 carried by the arm 26 of the movable electrode, to momentarily separate the electrodes and produce the spark. The cam piece 42 can be adjusted

to vary the time of release of the armature as may be desired.

This co-operation of the push rod 35 with the slide 33 connected with the armature, and with the disengaging cam 42, and the co-operation of the hammer arm 41 with the adjustable screw carried by the arm 26 of the movable electrode, are each and all substantially identical with those of the corresponding parts in the Kane construction. Indeed, if there be any difference between the two constructions with respect to "preservation of synchronism" or relation of parts between the push rod and the parts with which it co-operates to retract and release the armature, it would seem to be in favor of the Weber construction, since in the latter, when the igniter block and magneto are removed, not only the push rod but the parts with which it co-operates to actuate and release the armature are left intact upon the engine and their relation to each other, as previously adjusted, is not in any manner disturbed or affected by the removal and replacement of the igniter plug and magneto. When the igniter plug is unbolted from the engine and the plug and magneto removed the arm 40 projecting from the magneto armature, which has been previously engaged with the angularly bent end of the rod 40, simply slips out of engagement therewith, leaving the rod and all of its associated parts in fixed relation to each other on the engine, and when the igniter block and magneto are restored the arm 40 is simply re-engaged with end of the rod 39, and the parts necessarily bear the same relation to each other as they did before the removal of the igniter block and magneto; whereas, in the case of the Kane construction, if the igniter block and magneto are not restored to exactly the same position they occupied before—if, for instance, the magneto be tilted in the slightest degree axially of the armature shaft—the relation of the trip arm 35 to the end of the push rod 36 will be varied and require readjustment of the cam 62 on the push rod. This was in fact one of the defects in the Kane construction, which was remedied by the later invention of one of the Podlesak patents. (See lines 38-84 of Podlesak Reissue No. 13,878, Rec., 907, and claims 1 to 12, inclusive; also testimony of plaintiff's expert Webster, Rec., 452, 453.)

As will be clear from the foregoing, we think, so far as concerns Kane's provision for preserving intact the relations of the parts which cause a momentary separation of the electrodes at the right point in the return stroke of the ar-

mature to cause the spark to be produced when the current generated by the movement of the armature has reached its maximum, Weber's provision for such purpose is substantially identical with that of Kane, such identity extending even to the form and relation of the parts (compare the arm 27 carried by the movable electrode and provided with the adjustable screw 29 co-operating with the arm 30 on the armature shaft, of Kane, with the arm 26 carried by the movable electrode having the adjustable screw 27 co-operating with the arm 41 on the armature shaft, of Weber), while with respect to Kane's provision for preserving the relation or synchronism of the parts which are involved in the actuation and release of the armature, so as to produce the spark at the right point in the stroke of the engine, Weber likewise discloses means substantially identical with, if not somewhat better than, Kane's.

As must be apparent, therefore, the Weber and Kane disclosures are, with respect to the provisions for preserving the relation or "synchronism" of the parts concerned in producing the spark of maximum size or intensity, and of producing such spark at the right time in the stroke of the engine, substantially identical, and the fact that the armature-actuating spring is removable with the igniter block and magneto in the one case, and remains upon the engine when the block and magneto are removed in the other, is of no moment whatever. The only difference between the two disclosures or structures, due to the fact that the spring is removable with the magneto in the one case and not in the other, consists in the fact that when the spring is removed with the magneto it remains connected and associated with it after the magneto has been removed, so that if provision were made for retracting the armature of the magneto, against the resistance of its springs, and releasing it, while the magneto was detached from the engine, a spark might perhaps be somewhat more readily produced than if the armature were oscillated in both directions by hand, instead of being moved in one direction by hand and in the other by a spring. But the Kane patent discloses no provision whatever for retracting the armature, against the resistance of its springs, when the magneto is detached from the engine, and neither Kane nor plaintiff ever contemplated anything of the kind until after the invention of the very ingenious and unique provision made for the purpose by the Podlesaks, and disclosed in and covered by their patent, No. 1,101,956.

(Rec., 453-455; Ex. Bk., 899.) Prior to this invention of the Podlesaks the Kane magnetos, as manufactured and sold by plaintiff, were tested for spark in the manner described in plaintiff's circular (Rec., 21), under the heading, "To Test for Spark." It was quite impracticable to retract the armature, against the resistance of its springs, with one's fingers or hands, when the magneto was detached from the engine, and it was not practicable to do it in any definite and useful way with any mechanical device prior to the Podlesaks' invention. The court may recall the attempted demonstration to the contrary which plaintiff's counsel made at the oral argument with a screw driver, and the fact which was then apparent that the armature could not be retracted to and released at any definite point by any such means, so that the idealized "testing for spark" referred to in plaintiff's present petition and brief is something not only never contemplated by Kane or plaintiff, prior to the Podlesak invention referred to, but was wholly impossible of accomplishment.

As demonstrated in the course of the trial below, and shown by the record (pp. 695, 696), a spark can be produced, with either the Kane or Weber magneto, with the armature springs disconnected or entirely removed, the armature being oscillated back and forth by hand; and in the absence of some provision such as that invented by the Podlesaks, such hand operation was just as practicable a method of testing the magneto for spark as was anything that was possible with the Kane magneto.

Moreover, and in and of itself a sufficient answer to plaintiff's argument on this point, there is no pretense or claim (and if there were it could not be sustained) that Kane made any invention in the magneto itself which is in any way concerned with the matters which we have been discussing. He did not invent or design a magneto of the "self-contained" type, in which the armature springs were of the character of those employed by him and connected to the magneto in the same way. Milton's earlier magneto was of that exact type, as shown, for instance, in his patent, 1,053,107, of February 11, 1913 (applied for January 10, 1909), and it was still earlier than Milton, as shown, for example, in the Hennig patent. (See Fig. 2, Rec., 790.)

As clearly shown by the record, the principal difficulty which the International Harvester Company had with the Milton magneto was not in the magneto itself, but in the *mounting* of it upon the engine. They attempted to mount

it upon a small and insecure "boss" which was present upon the exterior of the cylinder wall, having been provided for another purpose (see Exhibit Book, p. 741), and as testified to by all of the witnesses for plaintiff, this mounting was found to be insecure and unsatisfactory. (Rec., 241-243, 364, 365.) What Kane did was not to make any substantial change in the Milton magneto itself, but simply to mount it upon the igniter plug instead of leaving it upon the frail and insecure "boss" where it had been previously located. Compare, on this point, the old Milton magneto, mounted in its old location, as shown on page 13 of the Exhibit Book, and the same magneto mounted upon the igniter block, and embodying Kane's alleged invention, as shown on page 15 of the Exhibit Book. As will be at once apparent, from a comparison of these two constructions—one equipped with Milton's magneto, the other equipped with Kane's magneto—the two magnetos were substantially identical, and Kane's alleged invention consisted simply in transferring the Milton magneto from its old mounting on the boss to its new mounting on the igniter block.

Manifestly, the *inventions*, if any, made by Weber and by Kane, in this respect, were absolutely identical, and consisted simply and solely in taking an old form of magneto and mounting it upon the igniter plug of an engine.

There was no novelty, at the date of Kane's alleged invention, in mounting the magneto of a gas engine upon the igniter plug of the engine, whether the magneto in question was of one old type or another—whether it was of the type disclosed in the Weber patent, in which the armature spring was disconnected from the magneto and remained on the engine when the magneto was removed or whether the magneto was of the "self-contained" type of Milton, which Kane used, and others which he might have used. The Wattles Patent No. 909,264 (Rec., 778-782) discloses a self-contained type of magneto mounted upon the spark plug of an engine—a disclosure in which "all of" the operating parts of the magneto are mounted upon and supported by the igniter block—so that there was no novelty whatever, at the date of Kane's invention, in mounting one type or another of old magneto upon the spark plug or igniter block of an engine. Weber had disclosed such mounting of one old type of magneto. Wattles had disclosed another. Kane simply took another slightly different type—the old Milton magneto—and transferred it from one loca-

tion on the engine to another, mounting it upon the spark plug or igniter block, just as Weber and Wattles had done with their magnetos. (Rec., 697.) That was all he did, so far as the claims in question are concerned, and the court was manifestly right in holding that it was not an invention at all.

Indeed, Kane himself never claimed to have made any invention in the mere mounting of the magneto upon the igniter block, but, on the contrary, testified (Rec., 277, 278, 281) that he did not consider it an invention at all, but a mere matter of design, and told his patent solicitor that the invention he desired to patent was his "automatic cut-off," to which the specification and claims of his application, as originally filed, were directed. It remained for the plaintiff after it acquired the Kane application, to introduce into it for the first time claims to the wonderful invention of mounting the old Milton magneto upon the spark plug instead of on the boss which had before carried it, and which Kane testified he did not consider an invention at all; and it did this (Exhibit Book, p. 687) more than eight years after the filing of Kane's application, and nearly nine years after the alleged invention had been in public use and on sale in this country and disclosed in Milton's British patent—indeed, *nearly three years after the present suit was brought.*

It would not seem that any further answer to plaintiff's petition could be necessary or desired, and yet there are a number of statements in the brief that may prove misleading if not briefly replied to. We especially call the attention of the court to the eight pages (pp. 22-29) which have been devoted to an effort to show that the Weber patent was a failure in the hands of its owner,—that the Accurate Engineering Company, which owned it at one time, adopted and manufactured the so-called unitary construction of Kane, and that the International Harvester Company, which succeeded to the business of the Accurate Engineering Company and to the ownership of the Weber patent, continued to employ almost exclusively plaintiff's unitary construction of the Kane patent. A reading of the testimony of Mr. Henry P. Cox, magneto superintendent for the International Harvester Company (Rec., 713-720), will show that plaintiff has not fairly stated or represented the facts, but on the contrary has sought to give the court an entirely false impression of them.

In the first place, plaintiff has introduced at pages 23 and

25 of its brief two cuts of what it represents to the court to have been the types of magneto manufactured by the Accurate Engineering Company, and points out that both are of the self-contained type, in which the armature-actuating spring is carried by the magneto, as distinguished from the type disclosed in the Weber patent. Now, the testimony of Mr. Cox shows (Rec., 717-719) that these cuts do not represent the commercial type of magnetos generally manufactured by the Accurate Engineering Company at all. On the contrary, Mr. Cox testifies that the company never manufactured any magnetos like that shown on page 23, except in an experimental way (Rec., 717), and never manufactured any like that shown on page 25 except upon a single order for Montgomery Ward & Company. (Rec., 719.) His testimony shows (Rec., 715) that the magneto which the Accurate Engineering Company largely manufactured for its customers in general, and which was very extensively used, and which the International Harvester Company continued to manufacture and use very extensively after acquiring the business of the Accurate Engineering Company, was one which plaintiff does not mention at all, to wit: the magneto shown in Defendant's Exhibit No. 51, reproduced at page 745 of the Exhibit Book. As the court will see from the illustrations of it there found, and from the description of it given by Mr. Cox on page 713 of the record, it is what plaintiff terms the "two-unit" construction of the old Milton magneto. That is to say, the magneto is independently supported upon the engine, at some distance from the spark plug or igniter block, and its armature is connected with the movable electrode by means of a rod passing through an eye or opening in the arm carried by such electrode and provided with an enlarged end or head, very much as disclosed in the Milton patent on page 848 of the Exhibit Book. That this so-called "two-unit" construction was entirely practicable, and highly satisfactory and successful commercially, fully appears from the testimony of Mr. Cox at pages 715, 719 and 720 of the record. It was very extensively manufactured by the Accurate Engineering Company prior to the acquisition of the business of that company by the International Harvester Company, it was adopted as the regular or standard equipment of the latter company on most of its engines, and at the time the witness testified (see bottom of page 719) the company had used between forty and fifty thousand of such equipments, and had largely abandoned the old

"unitary construction" previously supplied to it by plaintiff. (Rec., 714.) Indeed, to such an extent was this true that the witness did not know that the company was continuing to use the latter construction as regular equipment upon any of its engines (Rec., 715, 719), although it appeared from the subsequent testimony of Mr. Kleckner that such was the fact. At pages 719 and 720 of the record Mr. Cox gives at length the reasons why the Harvester Company preferred the two-unit construction of Exhibit No. 51 to plaintiff's unitary construction, and largely superseded the latter with it. Mr. Cox further testified (p. 715) to the "large quantities" of *rotary* magnetos that were being used by the Harvester Company at the time he gave his testimony—a type of magneto which plaintiff wholly ignores, as pointed out in our former reply brief (pp. 28, 29), in its repeated assertions (reiterated in its present brief) that eighty per cent of all of the magnetos used upon stationary gas engines at the present time are of plaintiff's so-called unitary construction and embody Kane's alleged invention.

The testimony of Mr. Cox and the exhibit (No. 51) referred to squarely contradict plaintiff's assertions at the page of its brief above referred to, as well as its later and similarly misleading statements on page 34.

In its effort to support the patentable novelty of Kane's alleged invention plaintiff reiterates the statements of its former brief respecting the large increase in the sales of the plaintiff's magnetos following the date of the alleged invention, but as pointed out in the reply brief heretofore filed by us (pp. 2-7) this large increase in sales did not come to pass until some four or five years after the date of Kane's invention, and was really due to plaintiff's abandonment of Kane's magneto and its adoption of Podlesaks' newly designed magneto embodying the inventions disclosed in and covered by the Podlesaks' patents found in the record. As pointed out in our former brief, plaintiff's very bill of complaint in this case alleges (Rec., 8) that plaintiff

"has built up a large and expanding and now lucrative business based wholly and entirely upon electric generators and ignition devices embodying the inventions of the said Podlesaks described, claimed and set forth in the aforesaid Podlesaks patents."

And its circular entitled "The Wonderful New Type 'K' " reproduced at page 657 of the Exhibit Book, and describing its latest and most improved form of magneto, says:

"The WEBSTER Type 'K' was made possible by the use of the Podlesak patents."

And at a later point, after enumerating the special advantages and features of the magneto, it further says:

"Although these features are the leading ones covered by the Podlesak patents there are numerous others which aid toward the easy handling of an engine."

The so-called Kane magnetos, which plaintiff put out in the earlier years, proved so unsuccessful and unsatisfactory that large numbers of them were called in and replaced by the Podlesak magnetos (see our former reply brief, pages 4-6, and Rec., 75-80), and in the later years they were entirely superseded by the Podlesak magnetos.

There is, therefore, clearly nothing in either the antecedents of Kane's alleged invention or in its subsequent history to negative the plain showing of the record that it was wholly lacking in the essential qualities of a patentable invention. The decision of the court, holding the claims in question to be invalid for lack of patentable invention over the prior art was right, and plaintiff's petition should be overruled.

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Endorsed: Filed March 25, 1921. Edward M. Holloway,
Clerk.

And afterwards, to wit: On the first day of April, 1921, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain reply to appellant's answer to petition for a rehearing, which is in the following words and figures, to wit: